

EXHIBIT CCC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MCDONALD'S CORPORATION,)
Plaintiff,)
vs.) No.)
1:19-cv-06471
VANDERBILT ATLANTIC) (DLI) (SLT)
HOLDINGS LLC,)
Defendant.)
-----)

REMOTE VIDEOTAPED DEPOSITION OF
TOM LI
Brooklyn, New York
Tuesday, August 31, 2021

Reported By:
CATHI IRISH, RPR, CRR, CLVS

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August 31, 2021

10:02 a.m.

Remote videotaped deposition of
TOM LI, with all participants
appearing via videoconference, before
Cathi Irish, a Registered Professional
Reporter, Certified Realtime Reporter,
and Notary Public of the State of
New York.

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A P P E A R A N C E S:

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Attorneys for Plaintiff

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BY: BRENDAN M. WALSH, ESQ.

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Attorneys for Defendant

125 Park Avenue

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BY: HOWARD S. KOH, ESQ.

ALSO PRESENT:

KEVIN GALLAGHER, videographer

WALLACE ZACCAGNINO, Veritext concierge

MICHAEL MEYER

STACY HOWARD

SAM ROTTENBERG

1
2 THE VIDEOGRAPHER: We're now
3 going on the record at approximately
4 10:02 a.m. Today's date is August 31,
5 2021.

6 This is media unit number 1 of
7 the video recorded deposition of Tom
8 Li taken by plaintiff in the matter of
9 McDonald's Corporation versus
10 Vanderbilt Atlantic Holdings LLC. It
11 is filed in the United States District
12 Court for the Eastern District of
13 New York. The case number is
14 1:19-cv-06471(DLI)(SLT).

15 The deposition is being held via
16 Zoom virtual conferencing.

17 I'm the videographer. My name is
18 Kevin Gallagher, the court reporter is
19 Cathi Irish, and our concierge as well
20 is Wallace Zaccagnino, and we're all
21 from the firm of Veritext Legal
22 Solutions.

23 All the appearances in this
24 deposition are on the written record.

25 At this time our court reporter

1

2

will swear the witness and we can

3

proceed.

4

T O M L I, called as a witness,

5

having been duly sworn by a Notary

6

Public, was examined and testified as

7

follows:

8

EXAMINATION

9

BY MR. WALSH:

10

Q. Good morning, Mr. Li, how are you

11

this morning?

12

A. I am well, how are you?

13

Q. Good, thanks. So we haven't

14

formally met each other yet. My name is

15

Brendan Walsh. I'm an attorney from

16

Pashma Stein Walder Hayden and I represent

17

the plaintiff, McDonald's Corporation in

18

this matter.

19

So you've been sworn in by the

20

court reporter just now and although we're

21

not in court, you are under oath and

22

obligated to tell the truth. Do you

23

understand that?

24

A. I do.

25

Q. There is a court reporter here

1 LI

2 who is taking everything down. I just ask
3 that you answer the questions verbally and
4 slowly so the court reporter can take
5 everything down, and the court reporter
6 also cannot record any hand gestures and
7 the like. Do you understand that?

8 A. I do.

9 Q. If you don't understand a
10 question, just let me know. If you answer
11 the question, I'm going to assume you
12 understood the question. And especially
13 with this remote format, it's important
14 that only one of us is speaking at a time
15 so please make sure you let me finish
16 speaking before you start speaking and
17 I'll do the same for you. The court
18 reporter can't take it all down if we're
19 all talking at the same time.

20 Your attorney may object to some
21 of my questions. Unless he directs you
22 not to answer, you should still go ahead
23 and answer. If you need a break for any
24 reason today, just let me know and we'll
25 take one so long as there's not a question

1 LI

2 pending. So again I ask that before we
3 take any break you answer any question
4 that's on the table.

5 Do you understand these
6 instructions?

7 A. I do.

8 Q. Is there any reason today such as
9 medication or anything else that would
10 prevent you from understanding my
11 questions or giving complete and accurate
12 answers to my questions today?

13 A. No.

14 Q. Where are you taking the
15 deposition from today?

16 A. My office.

17 Q. And where is your office?

18 A. At 266 Broadway in Brooklyn.

19 Q. Are you in the room alone?

20 A. I am.

21 Q. Does your room have a door?

22 A. There is a door.

23 Q. And is the door closed?

24 A. It's closed and locked.

25 Q. Can you describe what kind of

1 LI

2 screen setup you have in front of you and
3 what programs are open right now?

4 A. I have two monitors. There's a
5 camera on top of one of them which you're
6 seeing me through. I have Zoom on one
7 screen and I have the Exhibit Share on the
8 other screen, and no other programs are
9 open.

10 Q. Great. I just ask that
11 throughout the deposition today, please
12 just keep any other programs closed so
13 there's not any problems with people
14 trying to communicate with you and
15 whatnot. Do you feel that you've got the
16 technology and bandwidth to properly
17 conduct this remote deposition?

18 A. I think so.

19 Q. What did you do to prepare for
20 the deposition today?

21 A. I met with Howard yesterday
22 briefly.

23 Q. And is that it?

24 A. That's about the extent of my
25 preparation.

1 LI

2 Q. And how long did you meet for?

3 A. I want to say maybe an hour.

4 Q. Was anyone else present?

5 A. No.

6 Q. Did you review any documents in
7 preparation for the deposition today?

8 A. There were some documents that
9 Howard showed me.

10 Q. Do you recall what documents you
11 looked at?

12 A. I remember there was a lease
13 between McDonald's and MMB. I think there
14 were some appraisal reports we briefly
15 glanced at. That's roughly the extent of
16 documents I saw.

17 Q. And did you have any discussions
18 with Sam Rottenberg about his deposition?

19 A. I don't think there were anything
20 that could be characterized as discussion.
21 Maybe some comments that I was probably
22 on.

23 Q. Have you ever been deposed
24 before?

25 A. I have not.

1 LI

2 Q. Have you ever testified in court
3 before?

4 A. I have not.

5 Q. Can you please just briefly
6 explain your education history, whether
7 you went to college, any other degrees,
8 where you went to college, that kind of
9 stuff?

10 A. I finished undergraduate school.

11 Q. Where was that?

12 A. At NYU.

13 Q. When did you graduate?

14 A. 2009.

15 Q. What was your degree in?

16 A. Finance and there was management.

17 Q. And did you have any additional
18 education beyond college?

19 A. I've taken maybe a few random
20 courses on things that seemed interesting
21 but no formal programs.

22 Q. Do you hold any professional
23 licenses or certifications?

24 A. I'm a notary. I had a licensed
25 salesperson.

1 LI

2 Q. And is that for real estate?

3 A. For real estate.

4 Q. So you're a licensed real estate
5 broker?

6 A. Salesperson, not a broker.

7 Q. Okay, so a licensed real estate
8 salesperson. And when did you get that?

9 A. A few years ago.

10 Q. Where do you currently work?

11 A. I currently work in 266 Broadway
12 in Brooklyn.

13 Q. What company do you work for?

14 A. I do a lot of work with SPR
15 Group.

16 Q. So what do you mean you do a lot
17 of work with SPR Group? Do you work for
18 SPR Group or not?

19 A. I have an LLC which perhaps
20 qualifies me as an independent contractor.

21 Q. What's the name of that LLC?

22 A. S-H-I-M-M LLC.

23 Q. And do you currently do work with
24 any other entities besides SPR Group?

25 A. No.

1 LI

2 Q. Tell me a little bit about SPR
3 Group, what is SPR Group?

4 MR. KOH: Objection. Go ahead
5 and answer.

6 THE WITNESS: It's an LLC that I
7 guess Sam and I identify with.

8 BY MR. WALSH:

9 Q. Do you know when it was formed?

10 A. I don't.

11 Q. Are you a member of SPR Group?

12 A. No.

13 Q. When did you start working with
14 SPR Group?

15 A. Sometime in the latter half of
16 2017.

17 Q. How did you come to learn about
18 SPR Group?

19 A. I knew Sam several years prior to
20 that and SPR Group is really just Sam.

21 Q. And so you met Sam several years
22 ago and then decided to start working for
23 him?

24 A. Yes.

25 Q. What are -- when you first joined

1 LI

2 SPR Group or started working for SPR
3 Group, what did Sam explain to you that
4 you'd be doing for SPR Group?

5 A. There wasn't much of an
6 explanation, more that there was just a
7 lot to do. It was not specified in any
8 way.

9 Q. How many other people work for
10 SPR Group, do you know?

11 A. There's another person in the
12 office in addition to Sam and myself.

13 Q. And what are your
14 responsibilities for SPR Group?

15 A. There's no specific
16 responsibility. It's very much a
17 generalist role.

18 Q. So what types of things do you do
19 for SPR Group?

20 A. Anything that comes up.

21 Q. And SPR Group is in the real
22 estate business?

23 A. Yes.

24 Q. And how many different properties
25 does SPR Group work with, say right now?

1 LI

2 A. Hard to describe. It's multiple.

3 Q. And is 840 Atlantic Avenue in
4 Brooklyn one of those properties?

5 A. Yes.

6 Q. How did you meet Sam?

7 A. I was working at a development
8 firm previously. Sam worked on a
9 transaction where we purchased a
10 development site.

11 Q. What site was that?

12 A. It is in Long Island City in
13 Queens. The address is 29-26 Northern
14 Boulevard.

15 Q. And what type of projects did
16 that involve, was it a redevelopment?

17 A. It was a residential development
18 site.

19 Q. What was on the property before a
20 residential development?

21 A. I don't recall exactly but
22 parking space maybe.

23 Q. And what firm were you working
24 for at the time?

25 A. It was a company called Simon

1 LI

2 Baron Development.

3 Q. How long were you at Simon Baron?

4 A. Approximately eight years.

5 Q. So did you join Simon Baron right
6 from your graduation at NYU?

7 A. Yes.

8 Q. Right now, does your compensation
9 come from SPR Group?

10 A. Yes.

11 Q. And do you receive compensation
12 from any other entities?

13 A. Not on a regular basis but
14 there's a possibility of other sources.
15 At the current time, no.

16 Q. Can you describe what those other
17 possible sources are?

18 A. It's unlikely but to the extent I
19 perform some kind of advisory service to
20 other parties, there would be potentially
21 compensation.

22 Q. Have the terms of that potential
23 compensation already been negotiated?

24 A. No.

25 Q. So you're just saying that in the

1 LI

2 future, you may do other work that you
3 might then be compensated for?

4 A. It's a possibility.

5 Q. And right now, is your
6 compensation equivalent to like a salary,
7 you get a certain amount every month?

8 A. There's some amount, yes.

9 Q. So how is that amount determined?

10 A. I think Sam said why don't we do
11 this and I think I said yes.

12 Q. So is it a fixed amount every
13 year, every month? If you could just
14 describe to me what your current
15 compensation structure is.

16 A. It's quite hard to describe
17 because it's also subject to success rate
18 on some of the advisory work that SPR is
19 involved in.

20 Q. What do you mean by success rate?

21 A. If we are selling a property and
22 there would be a fee involved.

23 Q. And what properties could you
24 earn a success rate from?

25 A. Would you ask that again?

1 LI

2 Q. You said that if you sell a
3 property and there would be a fee
4 involved. For example, did you earn a
5 success rate with the project at
6 840 Atlantic Avenue in Brooklyn?

7 A. No.

8 Q. Will your compensation depend at
9 any part on what happens with the property
10 at 840 Atlantic Avenue in Brooklyn?

11 A. I don't think so, no.

12 Q. So if the property is rezoned and
13 a large redevelopment takes place on that
14 property, you would not receive any
15 additional compensation?

16 MR. KOH: Objection. Go ahead
17 and answer.

18 THE WITNESS: There's never been
19 a discussion on that topic. The focus
20 I don't think is 840 Atlantic.

21 BY MR. WALSH:

22 Q. What is the focus on?

23 A. There's a lot of day-to-day work
24 that flows through.

25 Q. What type of work?

1 LI

2 A. Looking at opportunities in real
3 estate.

4 Q. I'm sorry, what types of
5 opportunities?

6 A. In real estate.

7 Q. So potential acquisitions?

8 A. Yes.

9 Q. Okay. What is your relationship
10 to Vanderbilt Atlantic Holdings LLC? And
11 just so you know, I'm going to call
12 Vanderbilt Atlantic Holdings LLC just
13 Vanderbilt throughout this deposition to
14 make it easier.

15 A. I'm an officer.

16 Q. What is your title?

17 A. I think at one point somebody
18 suggested managing director. We don't
19 really go by titles in this office.

20 Q. How many other officers are there
21 for Vanderbilt?

22 A. I believe just one other.

23 Q. Who is that?

24 A. Sam Rottenberg.

25 Q. What are your responsibilities

1 LI

2 with Vanderbilt?

3 A. Managing the day-to-day
4 activities.

5 Q. And what types of day-to-day
6 activities does that entail?

7 A. I cut checks.

8 Q. Anything else besides cutting
9 checks?

10 A. I talk with the vendors,
11 architects, attorneys.

12 Q. Are you the primary point of
13 contact for those vendors?

14 A. For some of the vendors, yes.

15 Q. Which ones?

16 A. I don't know specifically. It's
17 either me or Sam.

18 Q. And you're not a member of
19 Vanderbilt; right?

20 A. No.

21 Q. Okay. So a couple weeks ago, and
22 I know you were observing Sam Rottenberg
23 was deposed. Do you recall that?

24 A. What?

25 Q. I said a couple weeks ago Sam

1 LI

2 Rottenberg was deposed and I know you were
3 observing; is that right?

4 A. Yes.

5 Q. I asked him some questions about
6 an organizational chart for -- that we
7 found in the production given by
8 Vanderbilt in this litigation and there
9 was some discussion about who the members
10 of MMB Associates LLC are. Do you recall
11 that?

12 A. I remember discussing the chart.
13 I don't remember specifically discussing
14 members of MMB but...

15 Q. So do you know who the members of
16 MMB Associates are?

17 A. I don't know all the members. I
18 know there's one member at least.

19 Q. Who is that?

20 A. Tony Musto.

21 Q. And Mr. Rottenberg testified that
22 he is the 100 percent owner of an LLC that
23 holds a 20 percent membership interest in
24 MMB. That LLC is called 840 Atlantic
25 Holdings LLC. Are you familiar with that

1 LI

2 entity?

3 A. I'm not sure if that's accurate.
4 I do think there's an entity by that name.

5 Q. What is your understanding of
6 that entity?

7 A. I've seen paper with that entity
8 written on it.

9 Q. And you said you're not sure if
10 what I said was accurate. What do you
11 believe to be accurate?

12 A. You said Sam testified to some
13 effect about the entity. I'm just not
14 sure what was -- I don't remember what was
15 said at that time.

16 Q. Okay. So you don't remember what
17 was said. You're not disputing that what
18 he said was accurate or inaccurate?

19 A. I just don't -- I'm not
20 confirming what he said. I don't know. I
21 don't remember.

22 Q. Do you know what consideration
23 Sam or his entity paid to become a member
24 of MMB Associates?

25 A. I don't know.

1 LI

2 Q. So I want to start talking a
3 little more about 840 Atlantic Avenue in
4 Brooklyn and as shorthand, I may just
5 refer to that property as the property.
6 Do you understand that?

7 A. Yes.

8 Q. When did you first learn about
9 the property?

10 A. I don't remember the exact time
11 but it was probably sometime in 2017.

12 Q. And was that around the time that
13 you joined SPR Group?

14 A. I would think so.

15 Q. And did Sam tell you about the
16 property?

17 A. I think so.

18 Q. What did he tell you about it?

19 A. There's a property at
20 840 Atlantic Avenue.

21 Q. And what did he tell you his
22 plans, if anything, were for the property?

23 A. He doesn't really describe
24 opportunities like that. It's more just
25 there's an address, take a look at it.

1 LI

2 Q. And what did he tell you to do
3 after you took a look at it?

4 A. Well, sometimes I take a look at
5 it. We may not visit it for several weeks
6 until it comes back again. There
7 wasn't -- I don't think there was any
8 action items.

9 Q. Now, were you involved in
10 Vanderbilt's acquisition of the 99-year
11 ground lease for the property?

12 A. I remember seeing some e-mails at
13 the final stages of that process.

14 Q. Did you have any other
15 involvement?

16 A. No.

17 Q. Did you join SPR Group during
18 those final stages of the negotiations?

19 A. I think so.

20 Q. So you think you joined SPR Group
21 around November 2017?

22 A. Yes.

23 MR. WALSH: If we can mark

24 VA 033610. That will be P41.

25 (Exhibit P41, document Bates

1 LI

2 labeled VA 033610, marked for
3 identification.)

4 VERITEXT CONCIERGE: Repeat that
5 number, please.

6 MR. WALSH: VA 0033610.

7 VERITEXT CONCIERGE: P41 is being
8 introduced in the marked exhibit
9 folder.

10 BY MR. WALSH:

11 Q. Mr. Li, this is a document
12 spanning from Bates number VA 033610 to
13 644. It's a one-page e-mail with an
14 attachment entitled McDonaldsLease.pdf.
15 If you can take a moment, are you able to
16 view the document?

17 A. Yes.

18 Q. So the top e-mail is an e-mail
19 from Sam Rottenberg to you sent November
20 22, 2017 and he's forwarding you the
21 McDonald's lease. Did he tell you why he
22 was forwarding you the McDonald's lease?

23 A. He did not.

24 Q. So what did you do with this when
25 you received it?

1 LI

2 A. I probably created a file and
3 tucked it away.

4 Q. And did you know why he was
5 sending it to you?

6 A. Just so I'd have it.

7 Q. Did you know that McDonald's had
8 a lease for the property?

9 A. Yes.

10 Q. And what did you know about the
11 lease at that time?

12 A. Almost nothing.

13 Q. Was this the first time you'd
14 seen the actual lease?

15 A. I think so.

16 Q. Did you read it?

17 A. I think I flipped through some of
18 the pages.

19 Q. Did you know that McDonald's had
20 the option to stay at the property through
21 April 2039?

22 A. I don't remember if I knew that
23 at the time.

24 Q. What did Sam tell you about
25 Vanderbilt's plans for McDonald's on the

1 LI

2 property?

3 A. You cut off at the earlier part
4 of the question, sorry.

5 Q. What did Sam tell you at the time
6 about Vanderbilt's plans for McDonald's on
7 the property?

8 A. I don't remember if he told me
9 any plans.

10 Q. Did Sam indicate whether he
11 wanted McDonald's to leave the property?

12 A. I don't think so.

13 Q. Has he ever told you that?

14 A. No.

15 Q. Did you ever have discussions
16 with Sam about finding a new location for
17 the McDonald's restaurant?

18 A. I don't think so.

19 Q. You thought a long time about
20 that?

21 A. I don't remember because we
22 looked at other locations in other parts
23 of the city but for this particular
24 location, nothing comes to mind.

25 Q. When did you first learn about

1 LI

2 the fair market value process under the
3 McDonald's lease?

4 A. Sometime subsequent to this
5 e-mail, I think.

6 Q. And what did you -- what were you
7 told about it?

8 A. There's a fair market re-set.

9 Q. And did Sam explain it to you?

10 A. He probably just referenced the
11 lease.

12 Q. And so then you reviewed that
13 portion of the lease?

14 A. I might have.

15 Q. Do you recall having discussions
16 with anyone else around this time about
17 the fair market value process on the
18 lease?

19 A. I don't remember having any other
20 discussions.

21 Q. Did Sam ever tell you that the
22 fair market value process could be a way
23 for Vanderbilt to get McDonald's to leave
24 the property?

25 A. He did not say anything about

1 LI

2 getting McDonald's to leave.

3 Q. So what did he say?

4 A. That there's a fair market
5 recess. He doesn't know what McDonald's
6 is going to do.

7 Q. Did he ever talk about how
8 McDonald's might leave the property if
9 they thought the rent was too high?

10 A. I don't believe he put those
11 words -- I don't believe he said those to
12 me, no.

13 Q. Do you know how Sam learned about
14 the property?

15 A. I don't know.

16 Q. So you don't know if he
17 approached Tony Musto or Tony Musto
18 approached him or something else?

19 A. I don't know the details.

20 Q. Do you know when Sam first began
21 having discussions about the property?

22 A. Sometime before 2017.

23 Q. And what do you know about the
24 discussions that he was having before
25 2017?

1 LI

2 A. I don't know.

3 Q. So you just know that there were
4 discussions but you don't know what was
5 involved?

6 A. Yes.

7 Q. And do you know how far before
8 2017 those discussions were?

9 A. I don't know exact.

10 Q. When did Simon Dushinsky become
11 involved in the property?

12 MR. KOH: Objection. Go ahead.

13 THE WITNESS: I don't know.

14 BY MR. WALSH:

15 Q. And what is his role with respect
16 to Vanderbilt?

17 A. He has been a passive member of
18 the LLC.

19 Q. About how many times a month do
20 you speak with him about the property?

21 A. This property?

22 Q. Yes.

23 A. I'm not sure if I've ever spoken
24 to him about this property.

25 Q. So you don't think you've ever

1 LI

2 spoken with him about this property?

3 A. No.

4 Q. You may remember from Sam's
5 deposition there was a discussion about
6 the real property transfer tax return for
7 the 99-year ground lease between MMB
8 Associates and Vanderbilt. Do you recall
9 that?

10 A. Yes.

11 Q. And do you recall that it shows a
12 seven million dollar valuation for the
13 amount of consideration for the conveyance
14 of the ground lease for MMB Associates to
15 Vanderbilt?

16 A. Did you say 70 or seven?

17 Q. Seven million.

18 A. Yes.

19 Q. What role, if any, did you have
20 in determining that consideration to be
21 reported to the government for transfer
22 tax purposes?

23 A. I don't believe I had any role in
24 that.

25 Q. Do you know how that amount was

1 LI

2 determined?

3 A. I don't.

4 Q. Did you ever have conversations
5 with Sam or anyone else about how the
6 amount was determined?

7 A. No.

8 Q. Are you familiar with the M-Crown
9 rezoning plan?

10 A. I'm aware of there being M-Crown
11 framework.

12 Q. What is your understanding of it?

13 A. The community board of that area
14 had discussed with persons at City
15 Planning and perhaps other elected
16 officials about creating a framework to
17 rezone an area.

18 Q. And the area includes
19 840 Atlantic Avenue; right?

20 A. 840 is within that area that's
21 proposed.

22 Q. When did you first learn about
23 the M-Crown rezoning plan?

24 A. Sometime after 2017.

25 Q. So it was after you joined SPR

1 LI

2 Group?

3 A. Yes.

4 Q. So the Department of City
5 Planning engaged with the community to
6 prepare this M-Crown rezoning district;
7 right?

8 MR. KOH: Objection. Go ahead.

9 THE WITNESS: I don't know if
10 City Planning was working with the
11 community board. They were drafting
12 with each other. I understand there
13 were conversations, discussions,
14 meetings.

15 BY MR. WALSH:

16 Q. And the M-Crown rezoning district
17 is a six-block area that's mostly the
18 Crown Heights section of Brooklyn; is that
19 right?

20 A. It's mostly in Crown Heights. I
21 can't tell you how big exactly the area
22 is.

23 Q. And the property sits at the
24 westernmost edge of the M-Crown rezoning
25 district; is that right?

1 LI

2 A. I believe so.

3 Q. And historically the M-Crown
4 rezoning district has consisted mostly of
5 industrial and manufacturing uses; is that
6 right?

7 A. That area has a lot of M zone
8 sites.

9 Q. What is an M zone site?

10 A. It's a site that permits
11 commercial and industrial developments,
12 uses.

13 Q. And is the M-Crown rezoning plan
14 seeking to transform the area into a more
15 residential neighborhood?

16 MR. KOH: Objection. Go ahead.

17 THE WITNESS: I'm not sure if
18 their aim is to transform it into a
19 residential neighborhood.

20 BY MR. WALSH:

21 Q. What do you understand the plan
22 to be?

23 A. I understand that the area
24 according to the community members has
25 been overlooked and they want -- they want

1 LI

2 to see some changes.

3 Q. And one of those changes is to
4 add a lot more residential to that
5 neighborhood; right?

6 A. I think their primary goal is to
7 actually add more commercial, hence the M
8 which I think stands for mixed use.

9 Q. And the property at 840 Atlantic
10 Avenue is actually given unique treatment
11 under the M-Crown rezoning plans; is that
12 right?

13 A. I think that really depends on
14 who you ask.

15 Q. Well, I use that term because do
16 you know who Benjamin Stark is?

17 A. Yes.

18 Q. Who is Benjamin Stark?

19 A. Benjamin Stark is an attorney for
20 Vanderbilt.

21 Q. Okay. And he represents
22 Vanderbilt in connection with its
23 application for rezoning of the property;
24 is that right?

25 A. Yes.

1 LI

2 Q. And he's presented at community
3 board meetings and for other officials; is
4 that right?

5 A. He has presented the proposal for
6 840 Atlantic Avenue.

7 Q. Okay. And do you remember a
8 March 4, 2021 meeting before the community
9 board 8?

10 A. There could have been a meeting
11 around that time. I don't recall a
12 specific date or time.

13 Q. It would have been the first
14 formal meeting with the community board
15 after Vanderbilt submitted its
16 application. Do you recall the first
17 meeting in early March?

18 A. I recall there was a first
19 meeting. I don't know the exact date or
20 time.

21 Q. And you attended that meeting, it
22 was a virtual meeting; right?

23 A. I believe I was in attendance.

24 Q. And during that meeting,
25 Mr. Stark told the board that the property

1 LI

2 was given, quote, unique treatment under
3 the M-Crown rezoning plan. So do you
4 disagree with his description of the
5 treatment given to this property under the
6 M-Crown rezoning plan?

7 A. I don't remember what he said so
8 I can't comment on what he may or may not
9 have said.

10 Q. So do you disagree with that?

11 MR. KOH: Objection.

12 THE WITNESS: I don't know what
13 he said.

14 BY MR. WALSH:

15 Q. Well, he said it's given unique
16 treatment. Would you agree or disagree
17 with that statement?

18 A. I think it really depends on who
19 you ask.

20 Q. I'm asking you.

21 A. I don't feel like there's any
22 unique treatment.

23 MR. WALSH: If we could mark

24 VA 027098.

25 (Exhibit P42, document Bates

1 LI

2 labeled VA 027098, marked for
3 identification.)

4 VERITEXT CONCIERGE: This has
5 been marked as Exhibit P42.

6 BY MR. WALSH:

7 Q. Mr. Li, if you could just pull up
8 that document, it spans from VA 027098
9 through VA 027124. It appears to be a
10 printout of a -- from a media PowerPoint
11 presentation. It's entitled M-Crown
12 report from DCP discussion, February 12,
13 2018.

14 Mr. Li, this document was
15 produced to us by Vanderbilt. You're
16 listed as the custodian and it -- the
17 metadata indicates that it was obtained
18 from a Dropbox folder with the path
19 840 Atlantic Ave Vanderbilt Atlantic
20 Holdings (547 Vanderbilt Ave)/zoning
21 M-Crown.

22 Have you seen this document
23 before?

24 A. I have seen it.

25 Q. And are you aware that Sam

1 LI

2 Rottenberg forwarded this document to Tom
3 Tener in June 2018?

4 A. Sam forwarded this file to me?

5 Q. Forwarded it to Tom Tener in June
6 of 2018.

7 A. To Tom Tener? I don't remember.

8 Q. If you could flip to 027100. It
9 says spring 2017.

10 A. Yes.

11 Q. So is it your -- then going
12 through the page ending in 106, is it your
13 understanding that this is a description
14 of the DCP's framework for M-Crown during
15 the spring of 2017?

16 A. I see it says DCP 2017 framework
17 but I think there's a lot of confusion
18 between whose framework each of the
19 presentation has been. So I take -- I see
20 here where it says DCP spring 2017
21 framework, that would be a DCP 2017 spring
22 framework.

23 Q. Okay, if you could flip to the
24 page ending in 102.

25 A. Um-hum.

1 LI

2 Q. So we're still in the spring 2017
3 framework. Do you see there's a little
4 map of the district and you see the
5 property at the very top left edge where
6 it's next to Vanderbilt?

7 A. Yes.

8 Q. And at least at that time, the
9 framework indicates that it's going to be
10 largely non-residential; is that right?

11 A. I don't know if that's correct.

12 Q. Well, do you see -- what color is
13 most of the property colored in this grid?

14 A. Purple.

15 Q. And what does the key say purple
16 represents?

17 A. Non-residential.

18 Q. Okay. But that ultimately
19 changed; right?

20 A. I would say the lots that are
21 currently Vanderbilt's are still
22 non-residential.

23 Q. But the vision changed; isn't
24 that right, the framework ultimately
25 changed?

1 LI

2 A. I'm not sure what this slide
3 exactly is. It doesn't -- I don't know if
4 this describes the framework for existing
5 uses on those lots.

6 Q. If you could turn to the page
7 ending in 108. It's entitled DCP February
8 2018 presentation.

9 A. Um-hum.

10 Q. Do you see that slide?

11 A. I do.

12 Q. And do you see the property also
13 on this slide?

14 A. I do.

15 Q. And it's again sort of the -- on
16 the left-hand side in the dark shading, do
17 you see that?

18 A. You said dark red?

19 Q. Yeah, it's like a dark red
20 shading. Do you see it?

21 A. Yes.

22 Q. With a little yellow underneath
23 it?

24 A. Yes.

25 Q. What is your understanding of

1 LI

2 what this is saying the vision for the
3 property is in this -- as of February
4 2018?

5 A. What this image tells me?

6 Q. Correct.

7 A. That this is the area being
8 considered as part of the framework.

9 Q. And what does it tell you about
10 the vision for the property at
11 840 Atlantic Avenue?

12 A. I see it says high density C.

13 Q. What does that mean?

14 A. I don't know what C stands for,
15 maybe commercial.

16 Q. And right next to high density C
17 it says significant new residential and
18 commercial. Do you see that?

19 A. Yes.

20 Q. Is there anything else on that
21 map that's the same color?

22 A. I don't think so.

23 Q. So it looks like in February
24 2018, DCP shared its vision that the
25 property would have significant new

1 LI

2 residential and commercial zoning attached
3 to it; right? That would be the vision?

4 MR. KOH: Objection. Go ahead.

5 THE WITNESS: I know there's a
6 slide here that says DCP February 2018
7 presentation. I'm not sure exactly
8 where DCP stands in this. Somebody
9 made this slide.

10 BY MR. WALSH:

11 Q. Well, do you have any reason to
12 believe it's inaccurate?

13 A. Inaccurate to what?

14 Q. Are you aware, is this at least
15 for 840 Atlantic Avenue, is this your
16 understanding of what DCP's vision for
17 what the zoning for this property will
18 look like?

19 MR. KOH: Objection. Go ahead.

20 THE WITNESS: I think some person
21 at DCP may have produced this. I
22 don't know if that represents DCP's
23 overall vision.

24 BY MR. WALSH:

25 Q. And you've had conversations with

1 LI

2 DCP officials over the year about this
3 property; right?

4 A. I was present at the meetings
5 with DCP.

6 Q. And did anyone from DCP say that
7 they did not want significant new
8 residential and commercial on this
9 property?

10 A. No.

11 Q. So is it your understanding that
12 DCP would like to see significant new
13 residential and commercial on this
14 property?

15 MR. KOH: Objection. Go ahead.

16 THE WITNESS: I don't know what
17 DCP wants besides what they produced
18 and shared with the community board.

19 BY MR. WALSH:

20 Q. Has anyone from DCP ever
21 indicated that they would not like to see
22 significant new residential and commercial
23 on this property?

24 A. I don't remember what exactly DCP
25 has indicated about this particular site

1 LI

2 or the extent of any change.

3 Q. Okay. Has the zoning for the
4 property changed since Vanderbilt acquired
5 it in November 2017?

6 A. I don't believe so.

7 Q. Are you aware of any
8 communications between representatives of
9 Vanderbilt and DCP about the property
10 before Vanderbilt acquired its ground
11 lease in November 2017?

12 A. I'm not.

13 Q. Who is Eugene Mekhtiyev?

14 A. He is an architect for
15 Vanderbilt.

16 Q. And he works at a firm called IMC
17 Architecture; right?

18 A. Yes.

19 Q. And Vanderbilt retained IMC
20 Architecture to prepare plans for a mixed
21 use building on the property in the event
22 of rezoning; right?

23 A. He prepared I believe what is
24 called zoning massing studies for the
25 property.

1 LI

2 Q. Can you describe what a zoning
3 massing study is?

4 A. He analyzes the zoning of the
5 site and produces a massing.

6 Q. And when Vanderbilt retained IMC,
7 did they ask IMC to prepare this study
8 based upon the current zoning or a
9 different zoning?

10 A. There I believe was a study based
11 on the higher zoning.

12 Q. And is the higher zoning
13 consistent or at least roughly consistent
14 with the DCP's vision under the M-Crown
15 rezoning plan?

16 A. I don't know.

17 MR. WALSH: If we could mark
18 VA 017719. It's an e-mail from
19 Jonathan Imani at IMC Architecture to
20 Eugene Mekhtiyev and a number of other
21 people. It was sent March 13, 2017,
22 has an attachment entitled -- I'm
23 sorry.

24 VERITEXT CONCIERGE: I'm now
25 introducing P43. It's taking a while

1 LI

2 to load.

3 (Exhibit P43, document Bates
4 labeled VA 017719, marked for
5 identification.)

6 BY MR. WALSH:

7 Q. So there's an attachment that is
8 also attached to this exhibit and the
9 exhibit runs through VA 017729. The
10 attachment is called 180313, 840 Atlantic
11 Ave ULURP.pdf.

12 Do you see that, Mr. Li?

13 A. Which page am I supposed to be
14 on?

15 Q. Just the first page, very first
16 page at the top.

17 A. I see an e-mail from Jonathan
18 Imani.

19 Q. And it indicates there's an
20 attachment, do you see that?

21 A. It says current file attached.

22 Q. Do you see the file name under
23 attachments, it ends with the phrase
24 ULURP?

25 A. Yes.

1 LI

2 Q. What is ULURP?

3 A. I believe it stands for Uniform
4 Land Use Review Process.

5 Q. And what is the process for?

6 A. It's a process for rezoning
7 sites.

8 Q. So if someone who controls a
9 property wants to get a private rezoning
10 of that property, they would have to go
11 through this ULURP process; is that right?

12 MR. KOH: Objection. Go ahead.

13 THE WITNESS: Can you ask the
14 question again?

15 BY MR. WALSH:

16 Q. So if someone who controls a
17 property wants to get a private rezoning
18 of that property, they would have to go
19 through the ULURP process; is that right?

20 MR. KOH: Objection.

21 THE WITNESS: That's one of the
22 avenues to achieve a rezoning.

23 BY MR. WALSH:

24 Q. And do you know when Vanderbilt
25 retained IMC?

1 LI

2 A. I don't remember exact time.

3 Q. Okay. Based upon this e-mail,
4 would you agree that they had been
5 retained at least by March of 2018?

6 A. Yes.

7 Q. And would you agree that they
8 were retained in connection with a
9 potential ULURP application for the
10 property?

11 A. They were retained to perform
12 zoning massing studies.

13 Q. Okay, but the attachment
14 references ULURP, it doesn't reference a
15 massing zoning study.

16 A. I think what they produced is the
17 zoning massing studies.

18 Q. Do you know -- and so in March
19 of -- March 13, 2018, they circulated what
20 they called a progress set of plans for
21 the property; right?

22 A. Where does it say progress at?

23 Q. On the first page, the first
24 e-mail. It says all, please find attached
25 the 840 Atlantic progress set.

1 LI

2 Do you see that?

3 A. Yes.

4 Q. And on the next page, the page
5 ending in 720, on the bottom it says
6 Atlantic Ave rezoning.

7 Do you see that?

8 A. I'm sorry, what did you say?

9 Q. On the next page, the page ending
10 in 720 on the bottom, it says Atlantic Ave
11 rezoning.

12 Do you see that?

13 A. Yes.

14 Q. Who is paying IMC?

15 A. Vanderbilt Atlantic Holdings LLC.

16 Q. And you don't recall when they
17 were retained?

18 A. I don't recall exact time.

19 MR. WALSH: If we can pull up
20 what's previously marked as Exhibit
21 P9. It's a two-page document,
22 VA 049132 to 133 entitled Community
23 Board 8 Housing Committee M-Crown
24 Subcommittee Minutes from a Meeting on
25 4/30/2018.

1 LI

2 VERITEXT CONCIERGE: P9 is now in
3 the marked exhibit folder.

4 BY MR. WALSH:

5 Q. Mr. Li, have you ever seen this
6 document before?

7 A. I believe so.

8 Q. And it appears to show that Tony
9 Musto and Sam Rottenberg attended an
10 M-Crown subcommittee meeting on April 30,
11 2018.

12 Do you see that?

13 A. That's what it looks like.

14 Q. Did Sam share with you why he
15 attended the meeting?

16 A. He didn't tell me exactly his
17 reason for attending the meeting.

18 Q. Are you aware of any reason other
19 than 840 Atlantic Avenue that Sam would
20 have attended this meeting?

21 MR. KOH: Objection. Go ahead.

22 THE WITNESS: I don't know.

23 MR. WALSH: If we could show
24 Mr. Li what's previously been marked
25 as Exhibit P10. It spans Bates

1 LI

2 numbers VA 010453 to 455.

3 VERITEXT CONCIERGE: P10 has been
4 moved to market exhibits.

5 BY MR. WALSH:

6 Q. So Mr. Li, this is an e-mail
7 chain. The top e-mail is an e-mail from
8 Sam Rottenberg to you on May 29, 2018.
9 It's got an attachment that appears to
10 have been prepared by IMC Architecture.

11 Do you see it?

12 A. Yes.

13 Q. Attached to the e-mail are notes
14 from a meeting with the Department of City
15 Planning on May 22, 2018; is that right?

16 A. I see notes from IMC for May 22,
17 2018.

18 Q. Do you know why Sam forwarded
19 this -- these notes to you?

20 A. It looks like I wasn't copied on
21 the previous e-mail.

22 Q. Okay. Do you know what the
23 purpose of this meeting between
24 representatives of Vanderbilt and DCP was?

25 A. To discuss Vanderbilt.

1 LI

2 Q. And the potential rezoning for
3 the property; right?

4 A. I don't remember what was
5 discussed exactly. I'm trying to read the
6 e-mail here.

7 Q. Do you see on the top left of the
8 page ending in 454, it's the first page of
9 the memo, under meeting memo it says
10 Project: Atlantic Rezoning?

11 A. Yes.

12 Q. So it appears that this was the
13 meeting to discuss a rezoning for the
14 property; right?

15 MR. KOH: Objection.

16 THE WITNESS: I see that's what
17 IMC labeled it as. I also see below
18 it's meeting number 1 with DCP and I'm
19 just trying to remember exactly what
20 was discussed.

21 BY MR. WALSH:

22 Q. Item number 1 says RL provided an
23 overview of the project. The lots are
24 currently in contract.

25 RL appears to be Ray Levin. Who

1 LI

2 is Ray Levin?

3 A. He was a zoning attorney at a law
4 firm that Vanderbilt was working with.

5 Q. So he was one of Vanderbilt's
6 attorneys?

7 A. At that time.

8 Q. And what does it mean by the lots
9 are currently in contract?

10 MR. KOH: Objection. Go ahead.

11 THE WITNESS: I'm not sure what
12 exactly they mean. Maybe they are
13 referencing the ground lease. I think
14 the phrase lots are in contract is
15 probably not accurate.

16 BY MR. WALSH:

17 Q. Why do you say that?

18 A. I think that would imply that we
19 were in purchase and sale agreements.

20 Q. But by this time you believe that
21 Vanderbilt controlled all of the lots that
22 would be part of this project?

23 A. I'm not sure if we control all of
24 the lots.

25 Q. Does Vanderbilt control all of

1 LI

2 the lots now that are part of the proposed
3 redevelopment plan?

4 MR. KOH: Objection. Go ahead.

5 THE WITNESS: Vanderbilt controls
6 a total of seven lots on the corner of
7 Vanderbilt and Atlantic Avenue.

8 BY MR. WALSH:

9 Q. And 840 Atlantic Avenue, those
10 are how many, seven lots?

11 A. I believe that's three lots.

12 Q. So there are four additional lots
13 that Vanderbilt also controls?

14 A. Yes.

15 Q. And how does it have control of
16 those lots?

17 A. Ground leases.

18 Q. When were those ground leases
19 entered into?

20 A. I don't know the exact times.

21 Q. Were they entered into before or
22 after Vanderbilt acquired its 99-year
23 ground lease for the property 840 Atlantic
24 Avenue?

25 A. After.

1 LI

2 Q. And so was 840 Atlantic Avenue,
3 were those the first lots that Vanderbilt
4 gained control of?

5 A. Yes.

6 Q. Vanderbilt submitted an
7 application into the ULURP process earlier
8 this year; right?

9 A. I don't remember exactly when
10 that was submitted.

11 Q. At the March 4, 2021 meeting your
12 attorney indicated that it was certifying
13 to ULURP on March 4, 2021. Does that
14 sound right?

15 A. That sounds generally correct. I
16 don't know the exact time.

17 Q. Do you know how long the ULURP
18 process is supposed to last?

19 A. My understanding is it's roughly
20 seven months.

21 Q. And Vanderbilt is seeking zoning
22 changes that would allow the construction
23 of an 18-story building with 316 dwelling
24 units as well as commercial and community
25 facilities on the first and second floors;

1 LI

2 right?

3 A. We forwarded a proposal that
4 generally matches that description.

5 Q. And before -- and McDonald's has
6 actually submitted proposed plans and
7 renderings of what the building would look
8 like on the property; is that right?

9 MR. KOH: Objection.

10 THE WITNESS: I don't follow the
11 question.

12 BY MR. WALSH:

13 Q. Has Vanderbilt submitted proposed
14 renderings of what its building or a
15 building would look like if its proposed
16 rezoning were to be approved?

17 A. We have as part of the
18 presentation renderings that show
19 Vanderbilt Atlantic under a different
20 zoning.

21 Q. And there's a pretty large
22 building in those renderings; right?

23 A. There's a bigger building.

24 Q. And about an 18-story building at
25 points?

1 LI

2 A. I believe it's 18 stories at the
3 highest.

4 Q. Could that building as shown in
5 those renderings be built with the
6 McDonald's restaurant on the property?

7 A. That exact building?

8 Q. Yes.

9 A. That could not be built with the
10 McDonald's.

11 Q. Who is Jamel Gaines?

12 A. Jamel Gaines is the creative
13 director for a nonprofit organization.

14 Q. And is that nonprofit called
15 Creative Outlet Dance Theatre of Brooklyn?

16 A. I know it's Creative Outlets. I
17 don't know the second half of -- I don't
18 know exactly what they called them. It's
19 more Jamel Gaines Creative Outlets.

20 Q. Part of Vanderbilt's proposal is
21 for the building on the property to
22 include a community use facility; right?

23 A. The proposal includes a space for
24 a facility.

25 Q. And do you recall Mr. Gaines

1 LI

2 speaking during the March 4, 2021
3 community board meeting about Vanderbilt's
4 proposed rezoning?

5 A. I don't remember.

6 Q. So he disclosed at the meeting
7 that his organization, Creative Outlet,
8 had been working with Vanderbilt to design
9 plans for a headquarters at the property
10 that would be built specifically for his
11 organization. Is that accurate?

12 A. I don't remember what he said or
13 whether he spoke at the meeting but
14 there --

15 Q. I'm sorry.

16 A. There's a space intended for, if
17 it's ever built, for Jamel Gaines Creative
18 Outlets.

19 Q. What kind of space is it?

20 A. It's a community facility space.

21 Q. How large?

22 A. The number I think has changed
23 but roughly 8,000 square feet.

24 Q. When did Vanderbilt begin
25 discussing this plan with Creative Outlet?

1 LI

2 A. I don't remember exact time.

3 Q. Has Vanderbilt entered into an
4 agreement with Creative Outlet?

5 A. They have not signed a lease with
6 Creative Outlets.

7 Q. But you discussed a lease with
8 Creative Outlet; correct?

9 A. We've discussed structure.

10 Q. And what have you discussed with
11 them?

12 A. We discussed their occupying a
13 space if it's ever developed.

14 Q. And they would be given below
15 market rent; right?

16 A. We've been asked to make that
17 accommodation.

18 Q. And is that something Vanderbilt
19 would do if its plan was approved?

20 A. We will be open to --

21 MR. KOH: Objection. Go ahead.

22 BY MR. WALSH:

23 Q. You said we will be open and
24 then --

25 A. We would be open to provide a

1 LI

2 below market rent to Creative Outlets.

3 Q. And the community board has also
4 asked Vanderbilt for some kind of a deed
5 restriction that would allow Creative
6 Outlet to stay there a long time; right?

7 A. I think what they are asking for
8 is for that space if it's ever built to
9 permanently serve nonprofit uses.

10 Q. Has Vanderbilt discussed with
11 Creative Outlet that this building can't
12 be built until potentially 2039 if
13 McDonald's stays on the property?

14 A. We made sure they are aware
15 there's a McDonald's on the site.

16 Q. That wasn't my question. My
17 question was if Vanderbilt has discussed
18 with Creative Outlet that the building may
19 not be able to be built until 2039 if
20 McDonald's stays on the property.

21 A. I don't remember exact
22 discussions or the time frame we may have
23 referenced.

24 Q. Okay. Have draft leases been
25 exchanged with Creative Outlet?

1 LI

2 A. No.

3 Q. So it's all just been
4 discussions?

5 A. We've prepared summarized terms
6 based on discussions.

7 Q. So has a letter of intent been
8 signed?

9 A. They did not sign a letter of
10 intent.

11 Q. Have drafts of a letter of intent
12 been circulated?

13 A. Yes.

14 Q. Have you ever heard the term
15 reasonable worst case development?

16 A. There was a horn outside. Could
17 you repeat the question?

18 Q. Sure.

19 Have you ever heard the term
20 reasonable worst case development
21 scenario?

22 A. I've heard the term before.

23 Q. What is it?

24 A. To be honest, I'm not quite sure.

25 Q. Okay. Are you aware that the

1 LI

2 Department of City Planning requires
3 developers seek a rezoning to disclose the
4 reasonable worst case development scenario
5 for the proposed development?

6 A. I think it's part of the overall
7 package leading up to certification.

8 Q. Okay. Did Vanderbilt submit a
9 reasonable worst case development scenario
10 to the DCP?

11 A. I believe our consultant prepared
12 something to cover the requirement.

13 Q. Were you involved in that
14 process?

15 A. I've been on e-mails with the
16 consultants. I don't believe I've
17 personally seen whatever analysis that
18 they prepared.

19 MR. WALSH: If we could mark
20 VA 018774.

21 (Exhibit P44, document Bates
22 labeled VA 018774, marked for
23 identification.)

24 BY MR. WALSH:

25 Q. It spans through 18779. It's an

1 LI

2 e-mail from Christina Szczepanski at
3 Philip Habib & Associates to a number of
4 people, subject 840 Atlantic Avenue
5 Rezoning - Draft RWCDs (18-109) and it's
6 got some attachments.

7 So Mr. Li, if you could open up
8 the document that's been marked as P44.

9 MR. KOH: It's not uploaded yet.

10 THE WITNESS: It is at my end.

11 BY MR. WALSH:

12 Q. Who is Christina Szczepanski?

13 A. She is a consultant for
14 Vanderbilt.

15 Q. What kind of consultant?

16 A. Environmental related.

17 Q. And she works for a firm called
18 Philip Habib & Associates?

19 A. Yes.

20 Q. So are they Vanderbilt's
21 environmental consultants for the proposed
22 rezoning at the property?

23 A. Yes.

24 Q. Okay. And from this e-mail, it
25 looks like in November of 2018, she

1 LI

2 circulated a draft reasonable worst case
3 development scenario to a number of people
4 including Sam Rottenberg; is that right?

5 A. Yes.

6 Q. Do you know if you ever reviewed
7 this draft?

8 A. I don't believe I've reviewed
9 this. Even if it was sent to me, I don't
10 think I've opened it.

11 Q. Have you been involved in
12 discussions about a potential build year
13 for the new development proposed for
14 840 Atlantic Avenue?

15 A. I believe that's part of the
16 package that makes certain assumptions.

17 Q. If you could turn to the page
18 ending in 778.

19 A. Yes.

20 Q. Do you see about halfway down, it
21 says section 5, build year and then what
22 is the proposed build year in this draft
23 document?

24 A. It says 2022.

25 Q. And it says it is expected that

1 LI

2 the proposed development would be
3 constructed over an approximately 18- to
4 22-month period following approval with
5 completion and occupancy expected to occur
6 in 2022. This build year was determined
7 in consideration of the amount of time
8 necessary for the development site to be
9 reasonably redeveloped.

10 Do you see that?

11 A. I see the words you just read.

12 Q. So did either you or Sam let
13 Philip Habib & Associates know that
14 McDonald's would have to be off the
15 property in order for this project to be
16 completed and occupied in 2022?

17 MR. KOH: Objection. Go ahead.

18 THE WITNESS: I don't remember
19 ever having discussion.

20 BY MR. WALSH:

21 Q. Do you remember hearing that this
22 2022 build year was being discussed?

23 A. This is the first time I'm seeing
24 this.

25 Q. Okay. So I guess were you aware

1 LI

2 that 2022 was being discussed at this time
3 for a possible date for the project to be
4 completed and occupied?

5 A. Am I aware if 2022 was used? I
6 was not.

7 MR. WALSH: If we can mark
8 VA 026381. It's a three-page document
9 ending in 383.

10 (Exhibit P45, document Bates
11 labeled VA 026381, marked for
12 identification.)

13 VERITEXT CONCIERGE: This will be
14 marked as Exhibit P45.

15 BY MR. WALSH:

16 Q. Mr. Li, if you could open up P45
17 when it becomes available.

18 A. Yes.

19 Q. Okay. This appears to be another
20 draft of the reasonable worst case
21 development scenario document; is that
22 right?

23 A. I see the date of February 26,
24 2019.

25 Q. Okay. So I'll represent to you

1 LI

2 that this document was produced to us in
3 this litigation. The metadata indicates
4 that you were the custodian and the
5 metadata indicates the document was
6 created on March 25, 2019.

7 There's some handwriting on the
8 document. Whose handwriting is that?

9 A. I don't know.

10 Q. That's not your handwriting?

11 A. No. My handwriting is much
12 worse.

13 Q. Do you recall receiving a draft
14 reasonable worst case development
15 scenario?

16 A. I don't remember receiving this.
17 If I saved it, perhaps it was in the
18 e-mail and I just never opened up the
19 attachments.

20 Q. If you could flip to the second
21 page of the document, and here the build
22 year is listed as 2023.

23 Do you see that?

24 A. Yes.

25 Q. Okay, so it seems that in the

1 LI

2 months from the previous draft we were
3 looking at, the build year had moved from
4 2022 to 2023; is that right?

5 A. Seems like the number has been
6 changed from 2022 to 2023.

7 Q. Do you know what the reason for
8 that change was?

9 A. I do not.

10 Q. And there's some proposed edits
11 throughout this document; right?

12 A. Yes.

13 Q. Are there any proposed edits to
14 the build year?

15 A. I'm not sure. I see some green
16 marking around the section but I don't
17 know exactly what they mean.

18 Q. No obvious edits were made to
19 this section; right?

20 A. No text was crossed out.

21 Q. So would you agree that somebody
22 at Vanderbilt was telling Philip Habib &
23 Associates that 2023 was a potential year
24 for this project to be completed and
25 occupied?

1 LI

2 MR. KOH: Objection. Go ahead.

3 THE WITNESS: I don't know if
4 anybody at Vanderbilt told persons at
5 Philip Habib about 2023.

6 BY MR. WALSH:

7 Q. Who has been dealing primarily
8 with Philip Habib & Associates?

9 A. I think there's a group e-mail in
10 which e-mails are exchanged.

11 Q. You said earlier that it's
12 primarily you and Sam at Vanderbilt;
13 right?

14 A. Doing?

15 Q. Running Vanderbilt.

16 A. Yes.

17 Q. So which of the two of you is
18 primarily responsible for dealing with
19 Philip Habib & Associates?

20 A. I think if there's any e-mails,
21 we would both be on the e-mails.

22 Q. And who is giving them
23 instructions?

24 A. I think Philip Habib could be
25 communicating with any person on such

1 LI

2 e-mail chains. They send out e-mails and
3 if people have input, they would provide
4 it.

5 Q. So especially given that the date
6 was changed from the prior draft, it seems
7 somebody at Vanderbilt had directed them
8 to change the date from 2022 to 2023; is
9 that right?

10 MR. KOH: Objection. Go ahead.

11 THE WITNESS: I don't know if
12 that's the case.

13 BY MR. WALSH:

14 Q. Do you know what the current
15 or -- strike that.

16 Do you know what build year was
17 included in the file document that was
18 submitted to the Department of City
19 Planning for reasonable worst case
20 development scenario?

21 A. I don't know.

22 Q. Were you involved in the
23 preparation of the environmental
24 assessment statement for the property?

25 A. To the extent I've been copied on

1 LI

2 e-mails.

3 Q. So have you had any involvement
4 in the preparation of a construction
5 schedule that was included in the
6 environmental assessment statement?

7 A. I remember working on a
8 construction schedule.

9 Q. And do you remember what that
10 construction schedule contemplated as far
11 as when would construction begin and when
12 it would end?

13 A. I don't remember.

14 MR. WALSH: We've been going for
15 about an hour and 20 minutes. I
16 propose we take about a five-minute
17 break if that's acceptable to
18 everybody unless, Mr. Li, if you need
19 longer.

20 THE WITNESS: It's good for me.

21 THE VIDEOGRAPHER: We're going
22 off the record now at approximately
23 11:28 a.m.

24 (Recess taken from 11:28 a.m. to
25 11:36 a.m.)

1 LI

2 THE VIDEOGRAPHER: This is the
3 beginning of media unit 2. We're
4 going back on the record at
5 approximately 11:36 a.m.

6 BY MR. WALSH:

7 Q. Mr. Li, when did you first learn
8 about the fair market value process under
9 the lease?

10 A. Sometime after I started in 2017
11 with SPR Group.

12 Q. What has your role been in that
13 process?

14 A. More of a generalist role at the
15 company, just anything that comes across
16 that needs to be worked on I would get
17 involved.

18 Q. So have you been -- have you been
19 involved in the fair market value process
20 for Vanderbilt?

21 A. I believe so.

22 Q. Who else has been involved in the
23 process for Vanderbilt?

24 A. Sam.

25 Q. And anybody else?

1 LI

2 A. There's -- no.

3 Q. Have you ever had discussions
4 with Tony Musto about the fair market
5 value process?

6 A. I don't remember.

7 Q. When was the last time you spoke
8 with Tony Musto?

9 A. Several weeks ago, maybe a few
10 months ago, over phone.

11 Q. And what was the purpose of that
12 discussion?

13 A. I don't remember.

14 Q. Has Vanderbilt been keeping
15 Mr. Musto or anybody else at MMB
16 Associates apprised of the status of this
17 litigation?

18 A. I'm not aware.

19 Q. And how about with the fair
20 market evaluation process generally?

21 A. I think if you ask, we would
22 respond but there's no reporting.

23 Q. And have you ever had any
24 discussions with him about it?

25 A. About the fair market re-set?

1 LI

2 Q. Yes.

3 A. No.

4 MR. WALSH: If we could pull up
5 what's been previously marked as P15.
6 It's a letter from Vanderbilt to
7 McDonald's dated May 10, 2018.

8 VERITEXT CONCIERGE: 15 is now
9 loaded.

10 THE WITNESS: Which item?

11 BY MR. WALSH:

12 Q. P15. Have you seen this document
13 before?

14 A. Yes.

15 Q. Whose signature is that on the
16 second page under Vanderbilt's name?

17 A. I'm not sure.

18 Q. Were you involved in the
19 preparation of this letter?

20 A. I don't remember.

21 Q. How did Vanderbilt determine that
22 the FMV is \$975,000?

23 MR. KOH: Objection. Go ahead.

24 THE WITNESS: I don't remember.

25 ///

1 LI

2 BY MR. WALSH:

3 Q. Were you involved in the process?

4 A. I believe I was.

5 Q. And who else was involved in the
6 process?

7 A. Sam.

8 Q. Was an appraiser involved at that
9 time?

10 A. I don't remember.

11 Q. So what information would
12 Vanderbilt have used to come up with this
13 \$975,000 valuation?

14 MR. KOH: Objection. Go ahead.

15 THE WITNESS: I don't remember.

16 BY MR. WALSH:

17 Q. In arriving at this valuation,
18 did Vanderbilt consider the encumbrance of
19 the McDonald's lease on the property?

20 MR. KOH: Objection. Go ahead.

21 THE WITNESS: I don't remember
22 what was considered or wasn't
23 considered at the time.

24 BY MR. WALSH:

25 Q. You don't recall whether this

1 LI

2 valuation considered current zoning or a
3 potential upzoning?

4 A. Would you ask that again?

5 Q. So you don't recall whether this
6 \$975,000 valuation valued the property
7 under current zoning or under a potential
8 upzoning?

9 A. I believe the letter is prepared
10 in accordance with the exhibit and the
11 lease.

12 Q. Do you know what assumptions were
13 made in arriving at that --

14 A. I don't remember.

15 Q. -- value?

16 A. I don't remember.

17 Q. Did you participate in any
18 discussions with anyone else about how
19 Vanderbilt expected McDonald's to react to
20 its \$975,000 estimate?

21 A. I don't remember having
22 discussion.

23 Q. Was Vanderbilt hoping McDonald's
24 would decide not to exercise its right to
25 stay on the property for its first option

1 LI

2 term?

3 MR. KOH: Objection. Go ahead.

4 THE WITNESS: No.

5 BY MR. WALSH:

6 Q. So Vanderbilt didn't care whether
7 McDonald's stayed or not?

8 MR. KOH: Objection. Go ahead.

9 THE WITNESS: I personally did
10 not care whether McDonald's stayed or
11 not.

12 BY MR. WALSH:

13 Q. And did anyone or did Sam ever
14 indicate whether he wanted McDonald's to
15 stay or to go?

16 A. He didn't communicate a
17 preference to me.

18 Q. Has he ever?

19 A. I don't remember.

20 Q. So Sam has never told you he
21 hopes McDonald's leaves before 2039?

22 A. I don't think so.

23 Q. Did you speak with Sam about the
24 discussions he had with Carol Demarco at
25 McDonald's in early 2018?

1 LI

2 A. He mentioned he had spoken or
3 e-mailed with Carol Demarco. I don't
4 remember the exact time. I know they
5 communicated.

6 Q. Did he tell you anything about
7 those discussions?

8 A. I don't remember what he told me.
9 I got the impression Carol was very busy.

10 Q. And did he say after those
11 discussions whether he believed McDonald's
12 was going to stay or go?

13 A. Can you repeat the question?

14 Q. Did Sam say after those
15 discussions with Carol whether he believed
16 McDonald's was going to stay or go when
17 its original term expired in April of
18 2019?

19 A. He didn't tell me what McDonald's
20 was thinking.

21 Q. When did Vanderbilt come to the
22 conclusion that it wasn't going to reach
23 agreement with McDonald's on the fair
24 market value of the property --

25 MR. KOH: Objection. Go ahead.

1 LI

2 THE WITNESS: I'm sorry.

3 Q. -- without going through the
4 formal process?

5 MR. KOH: Objection. Go ahead.

6 THE WITNESS: Could you repeat
7 the question again?

8 BY MR. WALSH:

9 Q. At what point did Vanderbilt come
10 to the conclusion that it wasn't going to
11 be able to reach agreement with McDonald's
12 on fair market value of the property
13 without going through the formal process
14 described in the option rent addendum to
15 the lease?

16 MR. KOH: Same objection. Go
17 ahead.

18 THE WITNESS: I don't remember.

19 BY MR. WALSH:

20 Q. And the option rent addendum
21 requires the parties each to appoint an
22 appraiser; is that right?

23 A. Yes.

24 Q. So when did Vanderbilt begin
25 looking for appraisers to serve as its

1 LI

2 appraiser for this fair market value
3 process?

4 A. I don't remember exactly when.

5 Q. Was it in 2018 or 2019 that it
6 began looking?

7 A. 2018 feels more likely than 2019.

8 Q. And Vanderbilt ultimately
9 selected Tom Tener at KTR to serve as its
10 appraiser; correct?

11 A. Yes.

12 Q. How many appraisers did
13 Vanderbilt speak to about this potential
14 engagement?

15 A. There were a few other
16 appraisers.

17 Q. Do you recall which ones?

18 A. I remember there was a company
19 called BBG. There were other companies.

20 Q. And when Vanderbilt was speaking
21 with these other appraisers such as BBG,
22 was it considering possibly using them as
23 the appraiser for the FMV process under
24 the lease?

25 MR. KOH: Objection. Go ahead.

1 LI

2 THE WITNESS: I don't remember
3 exactly what we were considering with
4 each of the appraisers.

5 MR. WALSH: If we could pull up
6 what's been previously marked as P17.

7 BY MR. WALSH:

8 Q. So Mr. Li, this is an e-mail or
9 an e-mail chain between you and Jerry
10 Sullivan at BBG from May of 2018.

11 Do you see that?

12 A. Yes.

13 Q. And so you were sending back a
14 signed proposal for BBG to do some
15 appraisal work for the property; right?

16 A. Yes.

17 Q. What was the purpose of
18 Vanderbilt retaining BBG at this time?

19 MR. KOH: Objection. Go ahead.

20 THE WITNESS: I see the purpose
21 here is to form an opinion of the as
22 is market value.

23 BY MR. WALSH:

24 Q. And where do you see that?

25 A. On 256.

1 LI

2 Q. And it indicates that right
3 underneath that that Vanderbilt asked BBG
4 to appraise the fee simple interest; is
5 that right?

6 A. I see it says fee simple
7 interest.

8 Q. Now, why would Vanderbilt want to
9 understand the value of the fee simple
10 interest of the property in May of 2018?

11 MR. KOH: Objection. Go ahead.

12 THE WITNESS: I don't remember.

13 BY MR. WALSH:

14 Q. Okay, under scope of work/report
15 type, it says we will provide value of the
16 land based on -- I'll start over. It says
17 we will provide the value of the land
18 based on comparable land sales and a
19 residual analysis if necessary in addition
20 to an analysis of the projected ground
21 rent for McDonald's.

22 Do you see that?

23 A. Yes.

24 Q. So it looks like at least part of
25 this analysis was to try to get an

1 LI

2 estimate of the ground rent for
3 McDonald's; right?

4 A. There was analysis for the
5 projected ground rent for McDonald's.

6 Q. Would that have been for the FMV
7 process under the McDonald's lease?

8 A. I don't remember.

9 Q. And do you remember who decided
10 that BBG would use the comparable land
11 sale analysis, if necessary the residual
12 analysis?

13 A. I don't remember.

14 Q. Do you know if BBG was provided
15 with a copy of McDonald's lease?

16 A. I don't remember.

17 Q. And BBG ultimately prepared an
18 appraisal report; is that correct?

19 A. I believe so.

20 Q. Did you review it?

21 A. I looked at maybe a few pages.

22 Q. And what did Vanderbilt do once
23 it -- with the appraisal once it received
24 it?

25 A. I created a folder and saved the

1 LI

2 file.

3 Q. For what purpose or purposes was
4 the appraisal report used for?

5 MR. KOH: Objection. Go ahead.

6 THE WITNESS: I don't remember.

7 BY MR. WALSH:

8 Q. So you just received it and saved
9 it in a folder?

10 A. Yes.

11 Q. You don't remember doing anything
12 else with it?

13 A. I don't remember doing anything
14 with it.

15 Q. Now did you have any discussions
16 with Sam Rottenberg about it?

17 A. I don't remember having any
18 specific discussions about the BBG
19 appraisal.

20 Q. Do you recall if BBG was informed
21 that McDonald's had the right to renew its
22 lease through April 2039?

23 A. I don't remember exactly what
24 they were told or weren't told. They
25 probably have all the relevant

1 LI

2 information.

3 Q. What do you mean other relevant
4 information?

5 A. I said all the relevant
6 information.

7 Q. And would the relevant
8 information include the McDonald's lease?

9 A. I don't remember what was
10 included or not included.

11 Q. When did Vanderbilt first reach
12 out to Tom Tener?

13 A. I think it was sometime in 2018.
14 I don't remember exactly what time.

15 Q. And were you involved in those
16 discussions with Tom Tener?

17 A. I remember either being on
18 e-mails or calls or other communication
19 with Tom Tener.

20 MR. WALSH: I'd like to show
21 Mr. Li what's previously been marked
22 P19. It's a one-page e-mail,
23 VA 022633.

24 VERITEXT CONCIERGE: P19 is being
25 moved over to the marked folder now.

1 LI

2 BY MR. WALSH:

3 Q. Okay, Mr. Li, if you could pull
4 up P19. So it's a June 7th e-mail, June
5 7, 2018 e-mail from Tom Tener to Sam
6 Rottenberg with a cc to Shaun Kest at KTR
7 and to Theresa Nygard at KTR, subject
8 840 Atlantic Avenue.

9 Do you see that?

10 A. I do.

11 Q. And Tom is discussing a potential
12 scope of work for an appraisal for
13 Vanderbilt for 840 Atlantic; is that
14 right?

15 A. Yes.

16 Q. Were you involved in the initial
17 discussion with Tom Tener?

18 A. I believe so.

19 Q. So at the bottom, the second
20 sentence of the second paragraph, it says,
21 "It's also our understanding the lease
22 with McDonald's will be expiring in the
23 near term."

24 Do you recall you or Sam telling
25 KTR that the McDonald's lease would be

1 LI

2 expiring in the near term?

3 A. Sorry, where does it say that?

4 Q. Bottom of the second paragraph.

5 A. Yes, I see the sentence.

6 Q. So do you recall you or Sam
7 telling KTR that McDonald's lease would be
8 expiring in the near term?

9 A. I don't remember exactly what was
10 conveyed to Tom Tener at the time.

11 Q. Did you believe that the
12 McDonald's lease would be expiring in the
13 near term in June 2018?

14 A. I understand there was a
15 structure within the lease that governed
16 the process.

17 Q. Did you believe the lease would
18 be terminating in the near term?

19 A. I don't remember why I believed
20 it at the time.

21 Q. Do you recall having any
22 discussions with Sam Rottenberg about --
23 at the time about telling KTR that the
24 McDonald's lease would be expiring in the
25 near term?

1 LI

2 A. I don't remember having
3 discussions about what to tell KTR.

4 MR. WALSH: If we could pull up
5 P20.

6 VERITEXT CONCIERGE: P20 has
7 moved to the folder.

8 BY MR. WALSH:

9 Q. Mr. Li, do you have P20 pulled
10 up?

11 A. I do.

12 Q. First of all, who is
13 molly.sprgrp@gmail.com?

14 A. She's a printer, scanner.

15 Q. So not an actual person, just
16 a -- that's a name of a printer or scanner
17 in your office?

18 A. At that time.

19 Q. If you could turn to the page
20 ending in 583, it's page 3 of the
21 engagement letter with KTR dated June 27,
22 2018.

23 A. I'm on the page.

24 Q. Is that your signature under
25 Vanderbilt Atlantic Holdings?

1 LI

2 A. Yes.

3 Q. So you signed this document on
4 July 2, 2018; is that right?

5 A. Yes.

6 Q. And before you signed the
7 document, you reviewed it and believed it
8 to be accurate?

9 A. I reviewed it and made sure that
10 financial exposure was omitted.

11 Q. Okay. In the first paragraph of
12 that letter, the page ending in 581,
13 middle of that paragraph, it says, "It is
14 our understanding that the lease with
15 McDonald's is expiring in the near term."

16 Do you see that?

17 A. I see where you just read.

18 Q. And you didn't cross that out or
19 correct it, did you?

20 A. I did not cross it out as I see
21 it here.

22 Q. Did you ever tell Mr. Tener that
23 that may not be accurate?

24 A. I don't remember exactly what was
25 conveyed but I think he has the relevant

1 LI

2 information to make a determination of the
3 facts.

4 Q. Okay. On the second page, there
5 are some bullet points about
6 three-quarters of the way down and the
7 letter says, "In order to initiate the
8 assignment, the following information, if
9 available, should be provided as soon as
10 possible." The first bullet is "Copies of
11 any leases that encumber the properties."

12 Do you see that?

13 A. Yes.

14 Q. Did McDonald's at this time
15 provide Mr. Tener with a copy of the
16 McDonald's lease?

17 A. I don't think McDonald's provided
18 anything --

19 Q. I'm sorry, did Vanderbilt at this
20 time provide Mr. Tener with a copy of
21 McDonald's lease?

22 A. I don't remember exactly what or
23 when it was provided but I think Tom Tener
24 has all the information that he needs.

25 Q. Now if Vanderbilt did not provide

1 LI

2 Mr. Tener with a copy of the McDonald's
3 lease, do you still believe he would have
4 had all the relevant information he needed
5 for his assignment?

6 MR. KOH: Objection.

7 THE WITNESS: The question is a
8 little confusing for me, sorry.

9 BY MR. WALSH:

10 Q. So you said you believe he had
11 all of the relevant information; correct?

12 A. Yes.

13 Q. Would that include a copy of the
14 McDonald's lease?

15 A. Yes.

16 Q. And if Mr. Tener was not given a
17 copy of the McDonald's lease at this time,
18 he would not have had all of the relevant
19 information; is that correct?

20 MR. KOH: Objection. Go ahead.

21 THE WITNESS: I don't remember
22 exactly what or when each individual
23 file was shared with Tom Tener.

24 BY MR. WALSH:

25 Q. That wasn't my question. I said

1 LI

2 if Mr. Tener was not given a copy of the
3 McDonald's lease at that time, he would
4 not have had all the relevant information
5 at that time; correct?

6 MR. KOH: Objection. Go ahead.

7 THE WITNESS: I think you're
8 asking for each piece of information
9 and if he needs it, depends on which
10 stage of the process he's working on.

11 BY MR. WALSH:

12 Q. And he asked for it in this
13 letter; right?

14 A. He did.

15 Q. So on the second page of the
16 letter ending in 512, it says, "It is
17 understood that the intended use of this
18 report is assist Vanderbilt Atlantic
19 Holdings LLC with certain asset
20 management-related decisions and
21 analysis."

22 What do you understand that to
23 mean?

24 A. I'm trying to find the sentence.
25 It means whatever the sentence means.

1 LI

2 Q. Well, I'm asking you what is your
3 understanding of what that sentence means?

4 A. Tom Tener had put a sentence
5 here.

6 Q. So you signed the letter but you
7 didn't know what he meant by that?

8 A. I don't remember what I
9 understood at the time.

10 Q. What was the intended use -- I'm
11 sorry, what was the intended use of this
12 report?

13 A. I don't remember the intended use
14 at the time.

15 Q. If it had been anything other
16 than for the fair market valuation process
17 under the McDonald's lease?

18 MR. KOH: Objection. Go ahead.

19 THE WITNESS: I don't remember
20 what use it was intended for at the
21 time.

22 BY MR. WALSH:

23 Q. That wasn't my question. Could
24 it have been for anything other than the
25 fair market valuation process under the

1 LI

2 McDonald's lease?

3 MR. KOH: Objection. Go ahead.

4 THE WITNESS: I don't remember if
5 it could have or could not have been
6 for any other purposes.

7 BY MR. WALSH:

8 Q. Can you think of any other
9 purpose that it could have been for?

10 A. Sorry, I'm printing something and
11 it's making noise. One second. Could you
12 repeat the question?

13 Q. Can you think of any other
14 purpose that it could have been for?

15 A. I don't know --

16 MR. KOH: Same objection.

17 THE WITNESS: -- what the -- any
18 of the purposes could have been.

19 BY MR. WALSH:

20 Q. What discussions did you have
21 with Sam about the KTR retention, do you
22 recall?

23 A. I don't remember having any
24 specific discussion with Sam about KTR
25 retention.

1 LI

2 MR. WALSH: If we can pull up
3 what's been previously marked as P21.

4 VERITEXT CONCIERGE: P21 is now
5 in the marked exhibit folder.

6 BY MR. WALSH:

7 Q. Mr. Li, this is an e-mail chain
8 between Vanderbilt and KTR. The first
9 e-mail is June 7, 2018 and then the last
10 e-mail in the chain is August 9, 2018.
11 It's an e-mail from you to Tom Tener.

12 Do you see that?

13 A. I see an e-mail August 9, 2018.

14 Q. And at the bottom of that first
15 page Tom writes an e-mail, "Sam, what are
16 the number of years in the anticipated
17 ground lease? The broker opinion that you
18 submitted says 99-year lease but only
19 presents a summation of 25 years without
20 any discounting."

21 Do you see that?

22 A. I do.

23 Q. And then you say, "Tom, it should
24 be a 99-year lease. Not sure what's
25 behind the BOV logic." And then several

1 LI

2 hours later you say, "I misunderstood the
3 question. I'll call you to discuss."

4 What was Mr. Tener asking about,
5 what lease?

6 A. In which e-mail?

7 Q. He asked you a question at the
8 bottom of the first page about what are
9 the number of years in the anticipated
10 ground lease?

11 A. Yes.

12 Q. So I'm asking you, do you recall
13 at least what he was asking about?

14 A. I don't remember.

15 Q. You say I misunderstood the
16 question. I'll call you to discuss. Do
17 you remember what your misunderstanding
18 was or what you called to discuss?

19 A. I don't remember.

20 Q. So you don't recall if this was
21 the McDonald's ground lease or some other
22 lease?

23 A. I don't remember what the
24 discussion was.

25 Q. And you don't recall what

1 LI

2 instructions were given to KTR; is that
3 right?

4 A. I don't recall and I don't know
5 if any instruction was given. I'm not
6 sure which is that time you're referring
7 to.

8 MR. WALSH: If we could pull up
9 the document VA 027486. It's a
10 two-page document ending in 487.

11 (Exhibit P46, document Bates
12 labeled VA 027486, marked for
13 identification.)

14 BY MR. WALSH:

15 Q. The top e-mail is an e-mail from
16 Tom Li to Tom Tener, copy to Sam
17 Rottenberg, August 8, 2018.

18 A. Which exhibit is this?

19 Q. I believe it should be P46?

20 A. So 027486?

21 Q. Yes.

22 MR. WALSH: So is there a way to
23 correct the exhibit sticker on that to
24 make it P46?

25 VERITEXT CONCIERGE: Yeah, I'm

1 LI

2 putting a new one in there now and

3 that old one will be deleted.

4 BY MR. WALSH:

5 Q. So Mr. Li, if you could please
6 look at P46.

7 A. Um-hum.

8 Q. It's an e-mail from you to Tom
9 Tener and you're saying I want to check if
10 the appraisal for 840 Atlantic Ave is
11 nearing completion. We're looking forward
12 to seeing your valuation.

13 A. Yes.

14 Q. Do you recall why you were
15 looking forward to seeing the valuation?

16 A. It must have been some time since
17 he started working on it.

18 Q. And you still don't remember why
19 Vanderbilt wanted that valuation?

20 A. I don't remember what the
21 valuation there is.

22 Q. Were you auditioning Mr. Tener
23 for potential use as the appraiser under
24 the FMV process for the McDonald's lease?

25 A. I don't know if there's any

1 LI

2 audition process but Tom Tener was being
3 considered.

4 Q. At that time?

5 A. At that time.

6 MR. WALSH: If we can look at
7 what's been marked as P22, it's the
8 August 30, 2018 KTR appraisal.

9 VERITEXT CONCIERGE: P22 has been
10 moved into the folder.

11 BY MR. WALSH:

12 Q. Mr. Li, if you could open up that
13 document.

14 A. Yes.

15 Q. And you've seen this document
16 before; correct?

17 A. I believe so.

18 Q. So if you can turn to VA all 0s
19 and then 8.

20 A. Yes.

21 Q. And do you see at the bottom it
22 talks about hypothetical conditions? Do
23 you see that?

24 A. I see a hypothetical condition.

25 Q. Now below that it says the client

1 LI

2 has requested an appraisal of the subject
3 land under the following hypothetical
4 condition.

5 A. I see that sentence.

6 Q. On the next page, so it's talking
7 about the M-Crown rezoning.

8 Do you see that?

9 A. I see M-Crown.

10 Q. And it says at the top of the
11 next page, bottom of that first paragraph,
12 it says this appraisal includes an opinion
13 of the market value of the fee simple
14 interest in the subject land under the
15 hypothetical condition that the subject
16 property is rezoned under the M-Crown plan
17 as described above as of the effective
18 date of this appraisal.

19 Do you see that?

20 A. I see the sentence.

21 Q. Do you know why Vanderbilt was
22 interested in the appraised value of the
23 property under that hypothetical condition
24 at that time?

25 A. I don't remember exactly why or

1 LI

2 why not -- why we weren't interested in
3 the hypothetical condition.

4 Q. Okay. On that same page, this is
5 the page ending in 09, it talks about
6 extraordinary assumptions.

7 Do you see this?

8 A. I see extraordinary assumptions.

9 Q. Point 1, it says the subject
10 property is improved with McDonald's
11 restaurant. At the time of the inspection
12 the restaurant continued operations. KTR
13 requested a copy of McDonald's lease but
14 was not provided with a copy.

15 Do you see that?

16 A. I see the sentence.

17 Q. And do you recall earlier that
18 Mr. Tener had requested a copy of all
19 leases in his engagement letter?

20 A. I remember there was a request
21 list within the letter.

22 Q. And you said that you wanted to
23 provide Mr. Tener with copies of all
24 relevant information; right?

25 A. I don't remember exactly what I

1 LI

2 said but yes.

3 Q. Do you know why Vanderbilt didn't
4 provide KTR with a copy of the McDonald's
5 lease even though he asked for it?

6 MR. KOH: Objection. Go ahead.

7 THE WITNESS: I don't remember
8 what happened at the time.

9 BY MR. WALSH:

10 Q. And at the bottom, the last
11 sentence of that point 1, it says the
12 value conclusions contained herein are
13 based on the extraordinary assumption that
14 the tenant has not exercised its renewal
15 option and the site is available for
16 development to its highest and best use.

17 Do you see that?

18 A. Which paragraph?

19 Q. It's the bottom of that point 1
20 under extraordinary assumptions, the last
21 sentence three lines up from point 2.

22 A. The value conclusions contained
23 herein are based on extraordinary
24 assumption that the tenant has not
25 exercised its renewal option.

1 LI

2 Q. Do you see that?

3 A. I see the sentence.

4 Q. Do you have any knowledge or
5 understanding about why Vanderbilt
6 directed Mr. Tener to prepare the
7 appraisal with that assumption?

8 MR. KOH: Objection.

9 THE WITNESS: I don't remember if
10 we directed or did not direct him to
11 use that assumption.

12 BY MR. WALSH:

13 Q. When you reviewed this appraisal,
14 did you ever ask him to correct his
15 appraisal because he had made an incorrect
16 assumption?

17 A. I don't remember how I reviewed
18 the appraisal.

19 Q. Do you remember telling Mr. Tener
20 or anyone else at KTR that it made an
21 incorrect assumption?

22 A. I don't remember what I told KTR
23 or anyone at KTR.

24 Q. Under point 2 on that page ending
25 in 09, point 2 under extraordinary

1 LI

2 assumptions it talks about the lease
3 between MMB Associates and Vanderbilt
4 Atlantic Holding.

5 Do you see that?

6 A. I see point 2.

7 Q. The last three sentences it says,
8 "According to the client, this ground
9 lease is between related parties. This
10 appraisal assumes no division of interest
11 is created by this ground lease. The
12 values developed herein reflect the fee
13 simple estate, exclusive of the noted
14 ground lease."

15 Do you see that?

16 A. I see that sentence.

17 Q. Do you know why Vanderbilt told
18 Mr. Tener to assume that MMB and
19 Vanderbilt are related parties?

20 A. I don't remember if we told Tom
21 Tener what or what not to assume.

22 Q. Do you believe that MMB
23 Associates and Vanderbilt Atlantic
24 Holdings are related parties?

25 A. I don't know exactly what the

1 LI

2 relationship is between those two
3 entities.

4 Q. So as an officer of Vanderbilt
5 Atlantic Holdings, you don't know what the
6 relationship is?

7 A. MMB is the key owner to which
8 Vanderbilt Atlantic Holdings pays rent.

9 Q. And is that the extent of the
10 relationship?

11 A. I don't know. There could be
12 other relations.

13 Q. But you don't know?

14 A. I don't know what you're asking
15 exactly.

16 Q. Well, I'm just trying to
17 understand, this appraisal refers to MMB
18 Associates and Vanderbilt are related and
19 I'm trying to understand what that means
20 and whether you believe that's correct or
21 not correct.

22 MR. KOH: Objection.

23 THE WITNESS: I don't remember
24 what I believed at the time.

25 ///

1 LI

2 BY MR. WALSH:

3 Q. What do you believe now?

4 A. I don't know what I believe now
5 about this particular sentence.

6 Q. So do you believe the lease
7 between MMB Associates and Vanderbilt
8 Atlantic Holdings is a ground lease
9 between related parties?

10 MR. KOH: Objection.

11 THE WITNESS: I think it's a
12 ground lease between two parties.

13 BY MR. WALSH:

14 Q. This uses the term related
15 parties. Do you believe that's an
16 accurate statement?

17 A. I don't know --

18 MR. KOH: Objection. Go ahead.

19 THE WITNESS: -- accurate or
20 inaccurate statements.

21 BY MR. WALSH:

22 Q. Do you know why Tom Tener used
23 the land sales comparison approach for
24 this appraisal?

25 A. I don't know why.

1 LI

2 Q. Did Vanderbilt discuss with Tom
3 or anyone else at KTR which methodology to
4 use?

5 MR. KOH: Objection.

6 THE WITNESS: I don't remember
7 exactly what we discussed with Tom
8 Tener.

9 BY MR. WALSH:

10 Q. You don't remember any specific
11 discussions about how he should appraise
12 the property?

13 A. I don't remember.

14 Q. Do you know if anyone at
15 Vanderbilt tried to assist KTR with
16 identifying potentially comparable leases?

17 A. I don't remember.

18 Q. When Vanderbilt received this
19 appraisal, what did it do with it once it
20 was ready?

21 A. Probably something similar to the
22 other appraisals that was filed and
23 stored.

24 Q. Did you share it with anyone?

25 A. I don't remember who the report

1 LI

2 may or may not have been shared with.

3 MR. WALSH: If we could mark the
4 document VA 049246.

5 (Exhibit P47, document Bates
6 labeled VA 049246, marked for
7 identification.)

8 BY MR. WALSH:

9 Q. So this is an e-mail chain
10 between individuals at Vanderbilt,
11 specifically Tom Li and Sam Rottenberg,
12 and individuals at Slater Beckerman.

13 A. Which exhibit is this? I'm not
14 sure I see it yet.

15 VERITEXT CONCIERGE: This will be
16 marked as Exhibit P47.

17 THE WITNESS: I see it now.

18 BY MR. WALSH:

19 Q. So do you see at the bottom of
20 the first page continuing on to the second
21 page, there's an e-mail from Stefanie
22 Marazzi --

23 A. Yes.

24 Q. -- at Beckerman. And Slater
25 Beckerman has a lobbying contract with

1 LI

2 Vanderbilt; right?

3 A. They have an engagement letter
4 with Vanderbilt.

5 Q. And they are engaged as lobbyists
6 for Vanderbilt for purposes of this
7 proposed redevelopment; right?

8 A. They are engaged as attorneys.

9 Q. So on August 13, Stefanie asked
10 Sam Rottenberg, it's on the top of the
11 second page, "Who should we list as the
12 chief administrative office for Vanderbilt
13 Atlantic Holdings LLC (the person who has
14 legal capacity to enter into a contract on
15 behalf of the organization)?"

16 Do you see that?

17 A. I see it.

18 Q. And later that day, "Hi,
19 Stefanie, I will be the chief admin for
20 Vanderbilt Atlantic."

21 Do you see that?

22 A. I see that.

23 Q. So do you have legal capacity to
24 enter into contracts on behalf of
25 Vanderbilt?

1 LI

2 A. Yes.

3 Q. And before you enter into
4 contracts, do you need to get approval
5 from anybody?

6 A. We would probably make sure
7 there's a brief conversation about
8 contracts.

9 Q. And who would you have that
10 conversation about with?

11 A. Sam.

12 Q. Anyone else?

13 A. I don't think so.

14 Q. So does Sam need to give you
15 approval before you sign contracts on
16 behalf of Vanderbilt?

17 A. I don't know exactly what
18 approval he needs to provide.

19 Q. And how is it determined that you
20 would be listed as the chief
21 administrative officer for Vanderbilt?

22 A. I think -- I don't remember
23 exactly how it was determined.

24 Q. Do you believe that title
25 accurately captures your role at

1 LI

2 Vanderbilt?

3 A. I don't know what the title fully
4 encompasses besides what Stefanie put in
5 the parentheses so I don't know.

6 MR. WALSH: Okay, if we can mark
7 VA 023820, it's an e-mail chain ending
8 in 828. That's e-mails between
9 Vanderbilt and KTR.

10 (Exhibit P48, document Bates
11 labeled VA 023820, marked for
12 identification.)

13 VERITEXT CONCIERGE: That's been
14 marked as P48.

15 BY MR. WALSH:

16 Q. And these are from August 2018.
17 You can open P48 when it becomes
18 available.

19 A. I have it open.

20 Q. Okay. So on August 9th, Shaun
21 Kest at KTR e-mailed Sam Rottenberg with a
22 copy to Tom Tener saying "Hi, Sam, would
23 it be possible to send us a copy of either
24 the lease or the lease abstract for the
25 McDonald's on the site?"

1 LI

2 Do you see that?

3 A. I see that.

4 Q. Who is Shaun Kest?

5 A. He's a senior vice president at
6 KTR Real Estate Advisors as I see here on
7 the e-mail.

8 Q. Was he working with Tom Tener on
9 the appraisal?

10 A. It seems that he's working with
11 Tom Tener.

12 Q. And Sam forwarded that e-mail to
13 you.

14 Do you see that?

15 A. I see it.

16 Q. What did Sam ask you to do, if
17 anything, with this request?

18 A. I don't recall if he asked
19 anything specifically.

20 Q. Do you recall having any
21 discussions with Sam about KTR's request
22 for the McDonald's lease or an abstract?

23 A. I don't remember having any
24 discussion about KTR's request with Sam.

25 MR. WALSH: Okay, if we can mark

1 LI

2 VA 028037 as P49. And that's a
3 continuation from the e-mail chain but
4 now just with Tom Li and Sam
5 Rottenberg.

6 (Exhibit P49, document Bates
7 labeled VA 028037, marked for
8 identification.)

9 VERITEXT CONCIERGE: It will be
10 introduced as P49.

11 BY MR. WALSH:

12 Q. Mr. Li, can you tell me when you
13 have P49 open?

14 A. I have it open.

15 Q. So minutes after Tom Li [sic]
16 sent you that e-mail from Shaun Kest, you
17 responded providing details about the
18 McDonald's lease to Sam Rottenberg only.
19 Do you see that?

20 A. You said Tom Li sent the e-mail
21 earlier. I think you meant to say Sam
22 Rottenberg sent the e-mail. I see I
23 responded to Sam Rottenberg there.

24 Q. Okay. And you provided him with
25 an abstract of the McDonald's lease;

1 LI

2 right?

3 A. I provided him with what I call
4 an abstract.

5 Q. And this information that you
6 sent to Sam only references extension
7 options.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall why this
11 information was not shared with KTR even
12 though Tom Tener's firm had asked for it
13 and you had provided it to Sam Rottenberg?

14 A. I don't remember.

15 Q. Did Sam tell you not to share
16 this information?

17 A. I don't remember what he told me
18 or did not tell me.

19 Q. Would you have asked or do you
20 recall if you asked Sam for permission to
21 send this information?

22 A. I don't remember asking Sam for
23 permission.

24 Q. Does it look like you were asking
25 him for permission in this e-mail?

1 LI

2 A. This e-mail is me saying I have
3 this available.

4 Q. But then you don't remember
5 having any further discussions with Sam
6 about it?

7 A. I don't remember what may or may
8 not have been discussed.

9 Q. Did Sam ever affirmatively tell
10 you that he did not want KTR to have this
11 information?

12 A. I don't remember what Sam may or
13 may not have told me.

14 MR. WALSH: If we can mark
15 VA 044862.

16 (Exhibit P50, document Bates
17 labeled VA 044862, marked for
18 identification.)

19 MR. WALSH: It's an e-mail from
20 Stefanie Marazzi to a number of people
21 dated October 12, 2018, Tom Li is
22 copied and there are some attachments.
23 It spans through 044891.

24 VERITEXT CONCIERGE: This will be
25 marked as P50.

1 LI

2 BY MR. WALSH:

3 Q. Please tell me when you have P50
4 open.

5 A. I have it open.

6 Q. So she says "Hello, attached is
7 the pre-application statement and
8 attachments for 840 Atlantic Avenue."

9 What is this a pre-application
10 statement for?

11 A. I think it's some paperwork with
12 City Planning.

13 Q. What is a pre-application
14 statement?

15 A. I don't know what the exact
16 definition of the pre-application
17 statement is but I think it has some
18 general information about the --

19 Q. So this would be information
20 submitted in advance of a formal
21 application for a rezoning application for
22 840 Atlantic Avenue?

23 MR. KOH: Objection.

24 THE WITNESS: This is paperwork
25 that we filed with City Planning. I

1 LI

2 don't know what purpose or stage it
3 reflects.

4 BY MR. WALSH:

5 Q. Now, if you can flip to the page
6 ending in 044886.

7 Do you see that?

8 A. It's loading for me.

9 886, yes.

10 Q. So on the very top it says, "Has
11 an informational meeting with the
12 appropriate borough office or division
13 been held?" And the box is checked yes,
14 Jonah Rogoff, date of meeting, September
15 17, 2018.

16 Do you see that?

17 A. I see.

18 Q. So did Vanderbilt or
19 representatives of Vanderbilt meet with
20 Jonah Rogoff at DCP in September of 2018?

21 A. I don't remember exactly what
22 time but I do remember at some point there
23 having been a meeting with Jonah Rogoff.

24 Q. And what would the purpose of
25 that meeting have been?

1 LI

2 A. I don't remember.

3 Q. Would it have been about a
4 proposed rezoning at 840 Atlantic Avenue?

5 A. I don't remember.

6 Q. Under 1A it says prospective
7 applicant name, the Rabsky Group,
8 prospective applicant, contact person
9 Simon Dushinsky.

10 Do you see that?

11 A. I do.

12 Q. Do you know why the Rabsky Group
13 is listed as the prospective applicant and
14 Simon Dushinsky the contact person?

15 A. I don't know why. It looks like
16 a mistake.

17 Q. Earlier you described
18 Mr. Dushinsky as a passive investor. Do
19 you recall that?

20 A. Yes, a passive member.

21 Q. Was he a passive member at this
22 time in 2018?

23 A. Yes.

24 Q. And even though he was a passive
25 member, Slater Beckerman thought that he

1 LI

2 would be an appropriate contact person?

3 MR. KOH: Objection.

4 THE WITNESS: I don't know what
5 they thought was appropriate or not
6 appropriate. I think they filled out
7 this form incorrectly.

8 BY MR. WALSH:

9 Q. If you could flip to the last
10 page ending in 891. The bottom of section
11 4, description of the proposed project
12 area, second paragraph, it says currently
13 the development site contains McDonald's
14 fast food establishment with a
15 drive-through fronting on Atlantic Avenue
16 and Vanderbilt Avenue.

17 Do you see that?

18 A. Yes.

19 Q. Then the next section describes
20 the proposed development as an 18-story
21 mixed residential and commercial building
22 with approximately 307,273 square feet of
23 floor area.

24 Do you see that?

25 A. I do.

1 LI

2 Q. So do you know if McDonald's --
3 Vanderbilt or representatives of
4 Vanderbilt told DCP in 2018 that
5 McDonald's had the right to be at the
6 property through 2039?

7 A. I don't remember what was or
8 wasn't told.

9 MR. WALSH: If we can mark what's
10 a document with the Bates stamp
11 VA 011088.

12 (Exhibit P51, document Bates
13 labeled VA 011088, marked for
14 identification.)

15 MR. WALSH: It's a continuation
16 of the same e-mail chain that we were
17 just looking at.

18 VERITEXT CONCIERGE: This has
19 been marked as P51.

20 BY MR. WALSH:

21 Q. Mr. Li, if you could open up P51,
22 it's an October 14, 2018 e-mail from Sam
23 Rottenberg to Stefanie Marazzi and Raymond
24 Levin at Slater Beckerman with a copy to
25 you.

1 LI

2 Do you see that?

3 A. Sam wrote an e-mail to Stefanie
4 and Raymond, yes.

5 Q. And Sam wrote, "Not sure whether
6 we discussed not having the Rabsky name on
7 this application. Thought it was
8 previously mentioned. Please insert
9 entity name as applicant."

10 Do you see that?

11 A. Yes.

12 Q. What discussions did Vanderbilt
13 have about not having the Rabsky name on
14 the application?

15 A. I don't remember what
16 discussions.

17 Q. Is there a reason why Vanderbilt
18 would not want to have the Rabsky name on
19 the application?

20 MR. KOH: Objection. Go ahead.

21 THE WITNESS: Because Vanderbilt
22 was the applicant.

23 BY MR. WALSH:

24 Q. Any other reason?

25 A. I don't know if there's any other

1 LI

2 reason.

3 MR. WALSH: If we could mark
4 VA 027972.

5 (Exhibit P52, document Bates
6 labeled VA 027972, marked for
7 identification.)

8 MR. WALSH: This consists of some
9 e-mails between Vanderbilt and KTR,
10 the most recent of which are e-mails
11 between Tom Li and Shaun Kest on
12 October 17, 2018.

13 VERITEXT CONCIERGE: This will be
14 P52.

15 BY MR. WALSH:

16 Q. If you could open up P52, please.
17 So on the bottom of the first page, you
18 wrote an e-mail to Shaun Kest, October 17,
19 2018. "Hi Shaun, Sam asked me to work on
20 840 Atlantic. I think there has been some
21 communication I wasn't cc'd on. Do you
22 have a minute to speak today?"

23 Do you see that?

24 A. Yes.

25 Q. And Sam -- sorry, Shaun responds

1 LI

2 just tried calling you back and you're
3 free to call him.

4 Do you see that?

5 A. Yes.

6 Q. Why were you reaching out in
7 October of 2018 to KTR?

8 A. I don't remember why I was
9 reaching out.

10 Q. So you don't recall what work Sam
11 asked you to perform?

12 A. I don't remember what Sam asked
13 me to do exactly.

14 Q. So you don't have any
15 recollection of the conversation you had
16 with Shaun in October 2018?

17 A. Zero.

18 MR. WALSH: If we can mark
19 VA 028067.

20 (Exhibit P53, document Bates
21 labeled VA 028067, marked for
22 identification.)

23 VERITEXT CONCIERGE: This will be
24 marked as P53.

25 ///

1 LI

2 BY MR. WALSH:

3 Q. If you can open up P53.

4 A. Yes.

5 Q. It's a document with NYC
6 Planning, Department of City Planning,
7 City of New York letterhead.

8 Do you see that?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. I may have seen it before.

12 Q. Do you know what it is?

13 A. It looks like an agenda for a
14 meeting.

15 Q. So it looks like an agenda for a
16 meeting between Vanderbilt and the
17 Department of City Planning on November
18 19, 2018; right?

19 A. That's what it looks like.

20 Q. To discuss the proposed project;
21 is that right?

22 A. That's what it says.

23 Q. And you're listed as an attendee,
24 do you see that?

25 A. I'm listed as an architect.

1 LI

2 Q. Do you recall if you attended the
3 meeting?

4 A. I believe I was at the meeting.

5 Q. And what was the purpose of the
6 meeting?

7 A. To discuss the proposed projects.

8 Q. And do you recall if anyone at
9 the meeting mentioned that the project
10 wouldn't proceed if McDonald's exercised
11 its option to stay on the property?

12 A. I don't remember what was
13 discussed at the meeting exactly.

14 MR. WALSH: If we could mark
15 VA 028077 as P54.

16 (Exhibit P54, document Bates
17 labeled VA 028077, marked for
18 identification.)

19 VERITEXT CONCIERGE: P54 is now
20 introduced.

21 BY MR. WALSH:

22 Q. Mr. Li, if you could open up P54.
23 It's also on DCP letterhead and has the
24 title Interdivisional Meeting Record.

25 Do you see that?

1 LI

2 A. I do.

3 Q. Now, the metadata for this
4 document identifies you as the custodian
5 and the file source as TLi/users/SL/
6 Dropbox/1.principal/840 Atlantic
7 Ave-Vanderbilt Atlantic Holdings (547
8 Vanderbilt Ave)/zoning-DCP application.

9 Who has access to this Dropbox
10 folder?

11 A. Me.

12 Q. Anyone else?

13 A. I don't believe so.

14 Q. Okay, so the TLi Dropbox folder,
15 those are exclusively in your possession?

16 A. Exclusively on the computer that
17 I'm using.

18 Q. And you're the only one who has
19 access to those?

20 A. I believe so.

21 Q. Okay. So are these the minutes
22 of a meeting -- of the meeting that we
23 just talked about on November 19 between
24 Vanderbilt and DCP?

25 A. It looks like it's a meeting

1 LI

2 record.

3 Q. So it looks like that meeting
4 went forward and Vanderbilt discussed its
5 plans with DCP; right?

6 A. We discussed whatever topics at
7 the meeting with DCP.

8 Q. If you could flip to the fourth
9 page of that document, it's the page
10 ending in 080.

11 A. Yes.

12 Q. Do you see the paragraph towards
13 the bottom, the development site is
14 comprised of five tax lots?

15 A. I don't see that exact sentence.

16 Q. It's the paragraph above proposed
17 development that's underlined. It's the
18 last paragraph under proposed project area
19 and development site.

20 A. Five tax lots. Yes, I see now.

21 Q. So the development site is
22 comprised of five tax lots under the
23 applicant's ownership. The development
24 site contains a McDonald's fast food
25 establishment with a drive-through and

1 LI

2 parking lot, but there's no discussion in
3 this document about McDonald's potentially
4 staying on the property through 2039. Do
5 you recall if that was brought up at this
6 meeting?

7 A. I don't remember what was or
8 wasn't brought up at the meeting.

9 Q. At the top of that page, it says
10 -- the very top, the Brooklyn DCP office
11 has been working with the community board
12 and its M-Crown subcommittee and recently
13 shared a framework in February.

14 Do you see that?

15 A. I see that sentence.

16 Q. And is that -- is the framework
17 that we were discussing earlier in that
18 PowerPoint presentation that we marked as
19 Exhibit P42; right?

20 MR. KOH: Objection.

21 THE WITNESS: It says February
22 framework as the reference here. It's
23 not very specific exactly which one
24 they are talking about.

25 ///

1 LI

2 BY MR. WALSH:

3 Q. So P42, the title of the document
4 is M-Crown report from DCP discussion
5 February 12, 2018. So it seems to be
6 referring to the same framework; is that
7 correct?

8 MR. KOH: Objection.

9 THE WITNESS: It's possible.

10 BY MR. WALSH:

11 Q. Are you aware of any other
12 framework it could be relating to?

13 A. I don't know.

14 Q. Do you know if DCP asked during
15 the meeting when Vanderbilt intended to
16 complete the project?

17 A. I don't remember what they asked
18 at the meeting.

19 MR. WALSH: If we could pull up
20 what was previously marked as P23.

21 VERITEXT CONCIERGE: It's now in
22 the folder.

23 BY MR. WALSH:

24 Q. If you could pull up P23, it's an
25 e-mail from someone at Republic Valuations

1 LI

2 to you and Sam Rottenberg sent February
3 15, 2019. It says please see the
4 completed draft report.

5 Do you see that?

6 A. Yes.

7 Q. Why did Vanderbilt retain
8 Republic Valuations to perform another
9 appraisal to the property?

10 A. I don't remember why Vanderbilt
11 retained Republic.

12 Q. And the draft report is dated
13 January 8, 2019; is that right? You can
14 look at VA 011956.

15 A. I see a date of January 8, 2019.

16 Q. So this was after Vanderbilt had
17 already received reports from at least KTR
18 and BBG; right?

19 A. I think so.

20 Q. Do you know if Republic ever
21 prepared a final report that was not in
22 draft form?

23 A. I don't remember whether they
24 prepared a final form.

25 Q. And you don't remember why

1 LI

2 Vanderbilt had this prepared?

3 A. I don't remember why.

4 MR. WALSH: If we could mark
5 VA 027997.

6 (Exhibit P55, document Bates
7 labeled VA 027997, marked for
8 identification.)

9 MR. WALSH: It's a four-page
10 e-mail chain spanning through 028000.

11 VERITEXT CONCIERGE: This to be
12 marked as P55.

13 BY MR. WALSH:

14 Q. If you could open up P55, please.
15 So the top e-mails are e-mails between
16 Vanderbilt and KTR from January 2019.

17 Do you see that?

18 A. I see a January 10, 2019 e-mail.

19 Q. The second e-mail on that first
20 page is an e-mail from Shaun Kest to Sam
21 Rottenberg copied to you and to Tom Tener
22 on January 9, 2019. And Shaun writes,
23 "Hi, Sam, based on our conversation this
24 morning, we can change the addressee to
25 Tom Li."

1 LI

2 Do you know why Vanderbilt wanted
3 the addressee of the report changed to
4 you?

5 A. I don't remember why.

6 Q. The next sentence says, "We can
7 update the report to reflect the market
8 value of the fee simple interest in the
9 subject property as if vacant,
10 unencumbered and available for development
11 to its highest and best use. Under this
12 scope, we would not need the extraordinary
13 assumption. We would have to state that
14 the property is leased to McDonald's and
15 that this encumbrance is not considered in
16 the appraisal.

17 Do you see that?

18 A. I see the sentences you just
19 read.

20 Q. Do you know why Vanderbilt and
21 KTR were discussing updating the report at
22 the time?

23 A. I don't remember why or what we
24 discussed with KTR.

25 Q. And on the top e-mail, January

1 LI

2 10th, it's an e-mail from you to Shaun,
3 the whole group, saying you're sending out
4 the payment and it should reach your
5 office by early next week. Can you work
6 on the update for \$3500 with delivery in
7 around three weeks.

8 Does this refresh your
9 recollection about why you wanted the
10 update and why you needed it around three
11 weeks?

12 A. It does not.

13 MR. WALSH: If we could mark
14 VA 027814.

15 (Exhibit P56, document Bates
16 labeled VA 027814, marked for
17 identification.)

18 VERITEXT CONCIERGE: This will be
19 marked as P56.

20 BY MR. WALSH:

21 Q. You can open up P56. It's a
22 continuation of the e-mail chain we were
23 just looking at.

24 The top e-mail is an e-mail from
25 Sam Rottenberg to Shaun Kest with a copy

1 LI

2 to you and Tom Tener January 16, 2019.
3 And he says, "Looking forward to get the
4 revisions tomorrow. We would like to
5 proceed on the full update based on the
6 M-Crown and Comp set updates."

7 Do you know what update Sam is
8 referring to there?

9 A. I don't remember.

10 Q. And you can't remember why
11 Vanderbilt wanted it at that time?

12 A. I cannot remember.

13 MR. WALSH: If we could mark
14 VA 027838.

15 (Exhibit P57, document Bates
16 labeled VA 027838, marked for
17 identification.)

18 MR. WALSH: It spans all the way
19 to 027958.

20 VERITEXT CONCIERGE: It will be
21 marked as P57.

22 BY MR. WALSH:

23 Q. You can open up P57 when it's
24 available and let me know.

25 A. I don't see it yet.

1 LI

2 Q. It just popped up on mine. So on
3 January 17, 2019, Shaun Kest sent what he
4 called a revised appraisal to Sam
5 Rottenberg with a copy to you and Tom
6 Tener, do you see that?

7 A. I do.

8 Q. If you can flip to the first page
9 of that revised report, it ends in 027847.

10 A. Yes.

11 Q. And so unlike the August 30, 2018
12 report, this one is now addressed to you.
13 Does this refresh your recollection about
14 why Vanderbilt wanted to change from Sam
15 Rottenberg to you?

16 A. I don't remember.

17 Q. And this report seems to be
18 essentially identical to the August 30,
19 2018 report with some small changes. So,
20 for example, the bottom of the first
21 paragraph of that letter, the last three
22 sentences of the first paragraph, it says,
23 "It is noted that the property is
24 currently leased to McDonald's with an
25 expiration date of April 8, 2019. The

1 LI

2 tenant has the option to extend the term
3 of the lease at the expiration of the
4 original term for successive periods
5 aggregating 20 years. It is further noted
6 that this encumbrance is not considered in
7 the appraisal."

8 Do you see that?

9 A. I see the sentence you just read.

10 Q. So do you recall whether KTR
11 insisted on issuing this revised report or
12 if this was something that Vanderbilt
13 requested?

14 A. I don't remember.

15 MR. WALSH: So it's just about 1
16 o'clock. We have been going for about
17 an hour and 25 minutes since we last
18 started. I propose that we take a
19 lunch break. I don't know how that
20 sounds to everybody else.

21 MR. KOH: That sounds fine to me.
22 How long would you like to take?

23 MR. WALSH: I don't need much.
24 Maybe a half hour should be sufficient
25 but whatever Mr. Li and the court

1 LI

2 reporter and everybody else would
3 like.

4 THE VIDEOGRAPHER: Stand by.
5 I'll go off the record. We're now off
6 the record at 1 p.m.

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: We're now
9 going back on the record at
10 approximately 1 p.m.

11 MR. WALSH: Okay, I'm sorry. I
12 wanted to ask Howard and Mr. Li in the
13 first section of the deposition,
14 Mr. Li referenced draft -- a draft
15 letter of intent that was shared with
16 I believe the name of the entity is
17 Creative Outlet. I believe that's
18 responsive to our discovery request
19 and I don't believe that was produced
20 to us, so I'm just putting on the
21 record that I would like Vanderbilt to
22 produce the letter of intent and any
23 other responsive documents that were
24 not produced to us.

25 MR. KOH: Okay. Well, we'll take

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LI

the request for the draft letter of intent under advisement. And at least at this stage, we certainly do not agree that that was called for under the discovery request so that's our response.

MR. WALSH: Okay, so we'll follow up with a letter but I just wanted to put that on the record.

MR. KOH: Fine with me. We'll see you in about half an hour.

MR. WALSH: Okay. So we can go off the record.

THE VIDEOGRAPHER: We're off the record at 1:01 p.m.

(Lunch recess taken at 1:01 p.m.)

1 LI

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:36 p.m.)

4 T O M L I, resumed and testified as
5 follows:

6 THE VIDEOGRAPHER: This is the
7 beginning of media 4. We're going
8 back on record at approximately
9 1:36 p.m.

10 CONTINUED EXAMINATION

11 BY MR. WALSH:

12 Q. Mr. Li, during this break did you
13 have any discussions with anyone other
14 than your attorney?

15 A. I didn't have any discussions.

16 Q. Did you speak with Sam
17 Rottenberg?

18 A. Only to ask if he was the person
19 on the call previously.

20 Q. And was he the person on the
21 call?

22 A. I believe he was.

23 Q. He was, okay. And for the
24 record, it looks like the unknown
25 participant who appears to have been

1 LI

2 Mr. Rottenberg is no longer on the Zoom.

3 MR. WALSH: Okay, if we can mark
4 VA 027808.

5 (Exhibit P58, document Bates
6 labeled VA 027808, marked for
7 identification.)

8 VERITEXT CONCIERGE: This will be
9 marked as P58.

10 BY MR. WALSH:

11 Q. Mr. Li, if you could open up P58,
12 it runs through 027813. It's a letter on
13 KTR Real Estate Advisors letterhead. It's
14 dated January 22, 2019. On the third page
15 it's signed by Tom Tener but does not have
16 the signature of anyone from Vanderbilt
17 Atlantic Holdings.

18 Do you see it?

19 A. I see it.

20 Q. Do you recall why KTR sent this
21 letter to Vanderbilt in January 2019?

22 A. I don't remember.

23 Q. Now we were looking -- before the
24 lunch break, we were looking at some
25 e-mails where there were e-mails between

1 LI

2 Vanderbilt and KTR talking about update of
3 the August 2018 appraisal. Do you recall
4 that?

5 A. I remember looking at e-mail.

6 Q. And do you believe that this,
7 what appears to be a draft retention
8 letter, related to that update that
9 Vanderbilt was e-mailing about earlier in
10 January 2019?

11 A. It may or may not be.

12 Q. So you don't know?

13 A. I don't know.

14 Q. The draft retention letter is
15 addressed to you. By the way, do you know
16 if this document was ever signed?

17 A. I don't know.

18 Q. You don't know.

19 So do you know if Vanderbilt ever
20 engaged KTR to do the update that had been
21 discussed in the e-mails we were looking
22 at earlier?

23 A. I don't remember.

24 Q. Okay, so in the bottom of the
25 first paragraph, actually the middle of

1 LI

2 the first paragraph, it says it is our
3 understanding that the lease with
4 McDonald's is expiring in the near term.
5 Furthermore, although the subject property
6 is encumbered by a long-term ground lease
7 dated January 30, 2017, the ground lease
8 is reportedly between related entities.
9 The purpose of this appraisal is to
10 estimate the market value of the fee
11 simple interest in the subject property as
12 if vacant, unencumbered and available for
13 development to its highest and best use.

14 Do you see that?

15 A. I see the sentences that you just
16 read.

17 Q. Now, does any of this refresh
18 your recollection about why Vanderbilt at
19 this time was looking for KTR to prepare
20 an updated appraisal?

21 A. I don't.

22 MR. KOH: Tom, I'm not sure we
23 got all your answer. Could you repeat
24 please?

25 THE WITNESS: I don't remember.

1 LI

2 BY MR. WALSH:

3 Q. Was this potential retention
4 related to the FMV process under the
5 McDonald's lease?

6 A. I don't know.

7 Q. What other purpose could it have
8 served?

9 A. I don't know.

10 Q. If we can view the document that
11 was previously marked as P25. It's the
12 cover e-mail from David Lyon at
13 Metropolitan Valuation Services. It's an
14 e-mail dated February 26, 2019 from David
15 Lyon to Sam Rottenberg, Morris Missry and
16 Tom Li. Let me know when you've had a
17 chance to look at the document.

18 A. I have it open.

19 Q. The e-mail states, "Gentlemen,
20 attached is the review of the KTR
21 appraisal report."

22 Do you recall why Vanderbilt
23 engaged Metropolitan Valuation in February
24 2019?

25 A. I don't remember.

1 LI

2 Q. The second paragraph, it says,
3 "In general, both reports are deemed
4 credible, though enhancements/
5 clarifications/additional data would
6 strengthen the credibility and confidence
7 in each. If I remember correctly, the
8 issue of the ground rents re-set was
9 intentionally not part of the initial
10 engagement for either KTR or BBG."

11 Do you see that?

12 A. I see the sentence you just read.

13 Q. Do you recall if the ground rent
14 re-set was intentionally not part of KTR's
15 initial engagement?

16 A. I don't recall.

17 Q. You don't remember ever
18 discussing that with David Lyon at
19 Metropolitan?

20 A. I don't recall having discussion
21 with David Lyon.

22 Q. Now, in the next sentence it
23 says, "In that regard, it would be my
24 opinion that both of the appraisal reports
25 (or one or the other, depending on your

1 LI

2 decision to use either, or both in your
3 preliminary negotiations with McDonald's,
4 or if you are prepared to exchange either
5 or both as part of the ground lease re-set
6 schedule) would need to be updated to a
7 current date of value and additional
8 market data would need to be
9 reviewed/included."

10 Do you see that?

11 A. I see the sentence you just read.

12 Q. What is your understanding of
13 what David Lyon was trying to tell you
14 there?

15 MR. KOH: Objection. Go ahead.

16 THE WITNESS: He was saying that
17 both the appraisal reports would need
18 to be updated to the current date of
19 value and perhaps some additional
20 market data to be included.

21 BY MR. WALSH:

22 Q. Did he tell you what additional
23 market data he felt would need to be
24 reviewed and included?

25 A. I don't remember what he's

1 LI

2 referencing.

3 Q. But it looks like Vanderbilt
4 discussed the McDonald's lease and rent
5 re-set process with David Lyon; is that
6 right?

7 A. We may or may not have discussed
8 it.

9 Q. Do you know if Mr. Lyon was given
10 any instructions about what method the
11 option rent addendum requires the parties
12 to appraise the property under?

13 A. I don't remember what
14 instructions precisely that may or may not
15 been provided to David Lyon.

16 Q. If you can turn to page of his --
17 of the appraisal report dated February 26,
18 2019, it's the page ending 464. Tell me
19 when you're there.

20 A. I'm on 464.

21 Q. Okay. And who is this appraisal
22 report addressed to?

23 A. To Vanderbilt Atlantic Holdings
24 LLC, attention Tom Li.

25 Q. So this was addressed to your

1 LI

2 attention specifically; right?

3 A. Yes.

4 Q. And this is what they call a
5 comprehensive desk review of the appraisal
6 report prepared by KTR Real Estate
7 Advisors of 840 Atlantic Avenue.

8 Do you see that?

9 A. I see the reference.

10 Q. Do you know which of the two
11 appraisal reports Metropolitan was looking
12 at, either the August 30 report or the
13 updated January 17, 2019 version?

14 MR. KOH: Objection. Go ahead.

15 THE WITNESS: I don't know.

16 BY MR. WALSH:

17 Q. Now, do you know if Metropolitan
18 at any point recommended to Vanderbilt
19 that that KTR report from August 2018
20 should be updated to reflect the changes
21 that they ultimately made in January of
22 2019?

23 A. I apologize, could you repeat the
24 question?

25 Q. Yeah. So KTR updated its August

1 LI

2 2018 report in January 2019; right?

3 A. I see two dates.

4 Q. Do you remember that we talked
5 about it before in January of 2019, KTR
6 updated its prior appraisal report to
7 address it to you and then included some
8 additional sentences in the bottom of the
9 first paragraph of that first page, do you
10 recall that?

11 A. I remember there were some
12 changes.

13 Q. So I guess what I'm asking is,
14 was Metropolitan Valuation Services
15 involved in any way in the decision to
16 have KTR issue that revised report in
17 January 2019?

18 A. I don't remember.

19 Q. If you could turn to the page
20 ending in 468.

21 A. I'm there.

22 Q. Actually, if you could turn to
23 465, I'm sorry.

24 A. Um-hum.

25 Q. On the bottom it says the

1 LI

2 appraisal notes the following hypothetical
3 conditions. And on this page and on the
4 page that follows, the page ending 466,
5 Lyon or Metropolitan Valuation Services
6 describes the hypothetical conditions and
7 extraordinary assumptions made in Tener's
8 report.

9 Do you see that?

10 A. 465?

11 Q. So bottom of 465 to 466 and it
12 talks about the -- it says the following
13 hypothetical conditions and the following
14 extraordinary assumptions.

15 Do you see that?

16 A. I see the two sections.

17 Q. So in this part of the report,
18 Metropolitan is discussing the
19 hypothetical conditions and extraordinary
20 assumptions made by KTR; right?

21 A. Yes.

22 Q. And at the bottom of 466,
23 Metropolitan writes, "We note that MVS
24 conducted only a cursory review of the
25 valuation of subject property by KTR under

1 LI

2 the M-Crown rezoning. As the proposed
3 rezoning initiative has not yet been
4 approved, it is our opinion that this
5 valuation scenario is highly speculative
6 as of both the effective date of value and
7 the date of the report."

8 Do you see that?

9 A. I do.

10 Q. And do you agree with the
11 conclusion that the scenario for the
12 upzoning is highly speculative?

13 MR. KOH: Objection.

14 THE WITNESS: I don't know if I
15 agree with MVS's opinion.

16 BY MR. WALSH:

17 Q. Did anyone at -- or did you or to
18 your knowledge Sam Rottenberg have any
19 discussions with Metropolitan about this
20 highly speculative nature of the M-Crown
21 rezoning?

22 A. I don't remember ever having
23 discussion about characterizing this as
24 highly speculative.

25 Q. If you could turn to the page

1 LI

2 ending in 474. The third paragraph down,
3 it says, "While we concur."

4 Do you see that?

5 A. I do.

6 Q. You write -- while we concur with
7 the 6.0 percent selection for a re-set, we
8 disagree that this rate would be
9 reflective of an initial rate against the
10 land valuation. Location, we are of the
11 opinion that the initial rate would be
12 closer to 4.5 to 5.0 and no consideration
13 would be given to any potential upzoning
14 as of the current date of value as this
15 would be highly speculative without formal
16 or at least anecdotal municipal approval."

17 Do you see that?

18 A. I see the sentences you just
19 read.

20 Q. Has Vanderbilt ever received
21 formal approval or anecdotal municipal
22 approval for the potential upzoning?

23 A. We have not received municipal
24 approval.

25 Q. So Vanderbilt has not received

1 LI

2 either formal approval or anecdotal
3 municipal approval; is that right?

4 A. We have not received formal
5 municipal approval. I don't know what
6 anecdotal approval is.

7 Q. Okay. Do you know if this
8 conclusion in the report or this opinion
9 in this Metropolitan report was shared
10 with Tom Tener?

11 A. I don't remember if we shared
12 this with Tom Tener.

13 Q. Do you recall having any
14 discussions with anyone about whether you
15 shared this conclusion or any other
16 conclusion in this report with Tom Tener?

17 A. I don't remember having
18 discussions whether to share with Tom
19 Tener. I'm sure I saved it.

20 Q. If you could turn to the page
21 ending 468, and specifically point 4. Let
22 me know when you're there.

23 A. I'm there.

24 Q. It says, "Should the appraisal be
25 utilized in conjunction with the ground

1 LI

2 rent re-set, the highest and best use
3 analysis as approved should consider the
4 encumbrance in place with respect to the
5 ground lease which precludes near term
6 demolition. Similarly, the tenant retains
7 additional option periods which would
8 limit any redevelopment opportunity."

9 Do you see that?

10 A. I do.

11 Q. And the ground rent re-set he's
12 referring to is the ground rent re-set
13 under the McDonald's lease; right?

14 MR. KOH: Objection.

15 THE WITNESS: I'm not sure
16 exactly which one he's referring to.

17 BY MR. WALSH:

18 Q. What other ground rent re-set
19 could he have been referring to?

20 MR. KOH: Objection.

21 THE WITNESS: I don't know.

22 BY MR. WALSH:

23 Q. So you're not aware of any other
24 ground rent re-set he could have been
25 referring to?

1 LI

2 MR. KOH: Objection.

3 THE WITNESS: I don't know.

4 BY MR. WALSH:

5 Q. Did you say no?

6 A. I don't know.

7 Q. Did you discuss this specific
8 conclusion with anyone at any time?

9 A. I'm sorry, this conclusion?

10 Q. Yeah, the conclusion that I just
11 read to you in point 4.

12 A. I don't remember discussing
13 conclusions, this conclusion with anyone.

14 Q. And who else received a copy of
15 this report?

16 A. This particular report, I'm sure
17 Sam had access to it.

18 Q. And Morris Missry is listed as a
19 cc on here so he would have received it as
20 well; right?

21 A. That is possible.

22 Q. Do you recall having any
23 discussions with Morris about this
24 document?

25 A. I don't remember having

1 LI

2 discussions with Morris Missry about this
3 document.

4 Q. And when you received this
5 report, what did you do with it?

6 A. I filed it.

7 Q. Did you review it?

8 A. I may or may not have looked at
9 portions of it.

10 Q. Do you know how much Vanderbilt
11 had to pay for this report?

12 A. I don't remember the amounts.

13 Q. And do you recall why Vanderbilt
14 wanted this report from Metropolitan?

15 A. I don't remember the exact
16 reason.

17 MR. WALSH: If we could mark
18 027513.

19 (Exhibit P59, document Bates
20 labeled VA 027513, marked for
21 identification.)

22 VERITEXT CONCIERGE: This will be
23 introduced as P59.

24 BY MR. WALSH:

25 Q. Look at P59 when you have a

1 LI

2 moment.

3 A. I have it open.

4 Q. So this is a series of e-mails
5 between Vanderbilt and KTR. The top
6 e-mail is an e-mail from you to Shaun Kest
7 and Tom Tener dated February 25, 2019, and
8 you write, "Here is the attorney
9 information," and you provide Morris
10 Missry's contact information.

11 Do you see that?

12 A. I do.

13 Q. Do you recall why you were
14 sharing Morris Missry's information with
15 them at that point?

16 A. I don't remember why.

17 Q. If you could please pull up what
18 was previously marked as P27.

19 A. P27?

20 Q. We'll have to upload it for you
21 because it was from Sam Rottenberg's
22 deposition. So this is actually the
23 e-mail that directly preceded the e-mail
24 that we were just looking at, P59, and
25 it's an e-mail from you dated February 25,

1 LI

2 2019 to Shaun Kest and Tom Tener at KTR
3 and you're attaching a copy of the option
4 rent addendum to the McDonald's lease.

5 Do you see that?

6 A. I see the attachment in the
7 e-mail.

8 Q. So does this refresh your
9 recollection about why you were sharing
10 Morris Missry's contact information with
11 them around that time?

12 A. Not at all.

13 Q. It appears that you were
14 discussing retaining KTR for purposes of
15 the fair market value process under the
16 lease; right?

17 MR. KOH: Objection.

18 THE WITNESS: I don't remember
19 what the purpose was.

20 BY MR. WALSH:

21 Q. If we can mark -- actually,
22 before we do that, do you know if this was
23 the first time period that either you or
24 Sam discussed the fair market value
25 process under the McDonald's lease with

1 LI

2 KTR?

3 A. I don't remember.

4 Q. And what role did Morris Missry
5 serve during the interview process?

6 A. He was an attorney for
7 Vanderbilt.

8 Q. And did Morris Missry have
9 authority to make decisions on behalf of
10 Vanderbilt relating to the FMV process
11 without consulting with either you or Sam
12 Rottenberg?

13 MR. KOH: Objection.

14 THE WITNESS: I think it depends
15 on what kind of decisions but I don't
16 believe so.

17 BY MR. WALSH:

18 Q. And what do you mean depends on
19 what kinds of decisions?

20 A. He's sending an e-mail. I don't
21 think he has to ask us if he (inaudible).

22 Q. But you would have expected him
23 to consult with Vanderbilt before making
24 decisions about the FMV process; is that
25 right?

1 LI

2 MR. KOH: Objection.

3 THE WITNESS: If you could give
4 an example what kind of decision
5 you're talking about.

6 BY MR. WALSH:

7 Q. For example, about the
8 instructions to give KTR.

9 A. I think Morris may or may not
10 have an opinion on certain matters at any
11 time. He would be entitled to send his
12 e-mails.

13 Q. So he's entitled to send e-mails
14 but you're not sure what decisions, if
15 any, he has authority to make on behalf of
16 Vanderbilt?

17 A. I don't remember.

18 Q. Do you remember having any
19 discussions with Sam about what discretion
20 to give Morris during the course of this
21 FMV process?

22 A. I don't remember having
23 discussions with Sam about what
24 discretions to provide.

25 Q. Did you have any types of

1 LI

2 discussions like that with Morris Missry?

3 A. I don't remember having
4 discussions.

5 MR. WALSH: If we can mark
6 VA 027432.

7 (Exhibit P60, document Bates
8 labeled VA 027432, marked for
9 identification.)

10 VERITEXT CONCIERGE: This will be
11 introduced as Exhibit P60.

12 BY MR. WALSH:

13 Q. Mr. Li, P60 is one page. It
14 looks like appointment --

15 A. Yes.

16 Q. -- calendar entry. Looks like it
17 was sent by Tom Tener to you and Shaun
18 Kest on February 25, 2019, re a meeting at
19 Wachtel Missry on February 28, 2019.

20 Do you see that?

21 A. I see it.

22 Q. And Tom Tener writes, "Tom, Shaun
23 and I will attend the meeting. As
24 detailed in our engagement letter, the
25 meeting and the additional services will

1 LI

2 be billed at KTR's standard hourly rates."

3 Did you attend what appears to
4 have been this February 28, 2019 meeting
5 with Wachtel Missry and KTR?

6 A. I may or may not have attended
7 the meeting, I don't remember.

8 Q. Do you remember what was
9 discussed at that meeting?

10 A. I don't remember.

11 Q. Do you remember the purpose of
12 the meeting?

13 A. It says 840 Atlantic Ave so I'm
14 assuming there was discussion about
15 840 Atlantic Avenue.

16 Q. Do you recall having any
17 discussions with anyone around this time
18 period about the instructions to be given
19 to KTR for purposes of preparing the
20 letter opinion of value for the FMV
21 process?

22 A. I don't remember discussing.

23 Q. So you don't remember having
24 those discussions?

25 A. I don't remember having or not

1 LI

2 having those discussions.

3 MR. WALSH: If we could please
4 pull up what's been previously marked
5 as P28. That's from Sam Rottenberg's
6 deposition. It's a cover e-mail with
7 the March 8, 2019 retention letter
8 between KTR and Wachtel Missry.

9 VERITEXT CONCIERGE: It is in the
10 marked exhibit folder.

11 BY MR. WALSH:

12 Q. Can you please pull it out,
13 Mr. Li?

14 A. I've got it.

15 Q. If you could turn to the page
16 ending in 92.

17 A. Yes.

18 Q. Whose signature is that under
19 Vanderbilt Atlantic Holdings?

20 A. It's my signature.

21 Q. And it says for payment
22 indemnification purposes. Do you know
23 what that means?

24 A. I don't remember.

25 Q. Do you recall why you were asked

1 LI

2 to sign this letter?

3 A. There was Vanderbilt Atlantic
4 Holdings on the signature.

5 Q. Now, the previous engagement
6 letters that we looked at between the
7 various appraisers for the property at
8 840 Atlantic Avenue were addressed to
9 someone at Vanderbilt but this one is
10 addressed to Morris Missry at Wachtel
11 Missry. Do you know why that is?

12 A. I don't remember why.

13 Q. Do you recall having discussions
14 with Sam or anybody about having an
15 attorney retain them at Vanderbilt?

16 A. I don't remember discussions.

17 Q. Did you review a draft of this
18 letter before Wachtel Missry sent it
19 out -- I'm sorry, before KTR sent it out?
20 Let me rephrase.

21 Did you review any drafts of this
22 letter before it was executed by Wachtel
23 Missry and Vanderbilt?

24 A. I had the letter before I signed
25 it.

1 LI

2 Q. Do you recall reviewing any prior
3 drafts of the letter?

4 A. I don't know if there were any
5 prior drafts. There may or may not have
6 been any prior drafts.

7 Q. Did you play any role in the
8 language that's included in this letter?

9 A. I don't remember playing a role
10 in the language in this letter.

11 Q. On the bottom of the first page
12 of the letter, it's the page ending 990,
13 there's a sentence that says it is
14 anticipated that the FMV will be based on
15 the standard market data approach
16 technique for valuing vacant land (the
17 sales comparison approach.)

18 Do you see that?

19 A. Which page, 990?

20 Q. Yeah. It's in the second large
21 paragraph halfway down.

22 A. I see the sentence now.

23 Q. Do you know why the engagement
24 letter indicates that the sales comparison
25 approach will be used?

1 LI

2 A. I don't know why.

3 Q. Couple sentences later it says,
4 "Additionally, KTR will prepare a detailed
5 work file adequate to illustrate the sales
6 comparison approach and analysis of the
7 comparable ground leases utilized to
8 estimate the FMV."

9 Do you know if KTR ever analyzed
10 comparable ground leases under this?

11 A. I don't know.

12 Q. You don't know? Have they made
13 any effort to try to identify comparable
14 ground leases?

15 A. I don't know what extent they
16 worked on this.

17 Q. Are you familiar with the
18 New York Court of Appeals decision 936
19 Second Avenue v. Second Corporate
20 Development Department?

21 A. I've heard it being mentioned.

22 Q. What do you know about that case?

23 A. Very little, almost nothing.

24 Q. When was the first time you heard
25 about that case?

1 LI

2 A. I don't remember exactly when I
3 first heard of it. I don't remember.

4 Q. Have you had discussions with
5 Morris Missry about that case?

6 A. I have heard him mention it. I
7 don't think I've had any discussions with
8 him about it that I remember.

9 Q. In what context was it brought
10 up?

11 A. I keep hearing Second Avenue
12 case, Second Avenue case.

13 Q. When did you keep hearing that?

14 A. I don't remember exactly when.

15 Q. Was it before the litigation was
16 filed or after the litigation was filed?

17 A. I'm not sure. I don't remember.

18 Q. Have you ever been involved with
19 any discussions with Tom Tener about the
20 case?

21 A. I don't remember having been
22 involved in any discussions.

23 Q. When did you become aware that
24 Tom Tener asked Morris Missry about the
25 Second Avenue case in April of 2019?

1 LI

2 MR. KOH: Objection. Go ahead.

3 THE WITNESS: I don't remember
4 whether or not it happened.

5 BY MR. WALSH:

6 Q. So you're not sure?

7 A. I don't remember.

8 Q. So you don't remember any
9 discussions around the time period of the
10 Second Avenue case specifically?

11 A. I don't remember specifics of any
12 discussion.

13 Q. Do you -- putting aside the
14 Second Avenue case, do you remember any
15 discussions with anyone around this April
16 time period, April 2019 time period of
17 whether the encumbrance of the McDonald's
18 lease should be considered in Tom Tener's
19 analysis?

20 A. I don't remember discussions.

21 MR. WALSH: If we could bring up
22 what's been previously marked as P32.
23 It's the April 15, 2019 KTR report.

24 VERITEXT CONCIERGE: Did you say
25 P32?

1 LI

2 MR. WALSH: P32, yes.

3 VERITEXT CONCIERGE: I don't have
4 that in this folder.

5 MR. WALSH: So it's actually
6 under Pinchus S. Rottenberg.

7 VERITEXT CONCIERGE: Moving that
8 right now.

9 MR. WALSH: And if there's a way,
10 I don't know if you can rename that
11 P32.

12 VERITEXT CONCIERGE: Moving P32
13 to the marked exhibit folder now.

14 BY MR. WALSH:

15 Q. If you could please open up P32.

16 A. I have it open.

17 Q. So this is the first appraisal
18 report that Tom Tener prepared for the FMV
19 process under the McDonald's lease; right?

20 A. This is an appraisal that --
21 restricted appraisal that Tom Tener
22 prepared.

23 Q. And it was for the FMV process
24 under the McDonald's lease; right?

25 A. I see there are references to the

1 LI

2 fair market value.

3 Q. Okay. By the way, I see this is
4 also addressed to Morris Missry as opposed
5 to Vanderbilt. Do you know whether any
6 other appraisers prepared reports similar
7 to this that were sent to Morris Missry?

8 A. I don't remember.

9 Q. In this report, Tom values the
10 property using only the land sales
11 comparison approach. Do you know why he
12 elected to use that method?

13 A. I don't know if -- how Tom Tener
14 valuated the property here.

15 Q. Did Vanderbilt attempt to
16 identify comparable ground leases for Tom
17 Tener as he was preparing this report?

18 A. I don't remember.

19 MR. WALSH: If we can mark

20 VA 026610.

21 (Exhibit P61, document Bates
22 labeled VA 026610, marked for
23 identification.)

24 VERITEXT CONCIERGE: This will be
25 introduced as P61. It's loading now.

1 LI

2 It might take a few seconds.

3 BY MR. WALSH:

4 Q. This spans all the way through
5 VA 026709 and appears to be a draft
6 environmental assessment statement for
7 840 Atlantic Avenue. Let me know when
8 you're able to open it.

9 A. I have it open.

10 Q. So this is a document produced by
11 Vanderbilt. You're identified as the
12 custodian of the metadata. The file name
13 is called 840 Atlantic Avenue-partial
14 draft EAS.pdf. The meta indicates it was
15 created on May 16, 2019 and the original
16 e-file source is the TLi/users/desktop/840
17 Atlantic Ave. And you're looking at this
18 document now?

19 A. I'm looking at the exhibit.

20 Q. So what is this exactly?

21 A. It's a form with New York City.

22 Q. And was this another -- was this
23 a draft environmental assessment statement
24 prepared by Philip Habib Associates?

25 A. I don't know who filled this out

1 LI

2 exactly.

3 Q. So the metadata indicates that
4 the document author is PHA workstation.
5 Does that sound like it's Philip Habib
6 Associates?

7 A. It's possible.

8 Q. And they are your environmental
9 consultant for the project; right?

10 A. Yes.

11 Q. And so it looks like they were
12 continuing to do environmental work for
13 the project in May 2019. If you could
14 flip to the second page of the document on
15 the bottom it says 8 analysis year. It
16 says anticipated build year (date the
17 project would be completed and
18 operational) 2023. And then underneath
19 it, it says anticipated period of
20 construction in months 18 to 22 months.

21 Do you see that?

22 A. I do.

23 Q. Do you ever recall having any
24 conversations with Philip Habib Associates
25 either around this time or any other time

1 LI

2 letting him know that 2023 may not be a
3 realistic date for completion of this
4 project if McDonald's exercises its right
5 to stay on the property?

6 A. I don't remember having any
7 specific discussions.

8 Q. Are you aware that they were
9 listing 2023 as a potential completion
10 date?

11 A. I see the date right now.

12 Q. Well, were you aware before today
13 that they were listing 2023 as a potential
14 completion date?

15 A. I don't remember if I was aware
16 at the time.

17 Q. Do you believe 2023 is a
18 realistic date for the project to be
19 completed and operational?

20 MR. KOH: Objection. Go ahead.

21 THE WITNESS: I don't know.

22 BY MR. WALSH:

23 Q. And by May 2019, McDonald's had
24 already notified Vanderbilt that it
25 intended to stay or to exercise its option

1 LI

2 to stay on the property from April 2019
3 through April 2024; right?

4 A. I don't remember exactly when the
5 letter from McDonald's was sent by
6 McDonald's.

7 Q. But May 2019 is already into the
8 first option period; right?

9 MR. KOH: Objection. I'll
10 withdraw that.

11 THE WITNESS: I don't remember
12 what exact date the extension term
13 starts.

14 BY MR. WALSH:

15 Q. Do you recall a meeting between
16 representatives of McDonald's and
17 Vanderbilt on June 19, 2019?

18 A. I remember there was a meeting at
19 Morris Missry's office around that time,
20 maybe on that date.

21 Q. Who was there?

22 A. The meeting that I'm remembering,
23 I was there, Sam was there, Morris Missry
24 was there, I believe Carol Demarco was
25 there, I believe Mike Meyer was there. I

1 LI

2 think the appraisers were also there.

3 Q. Tom Tener and Sharon Locatel were
4 also there?

5 A. Yes.

6 MR. WALSH: If we could pull up
7 what's been previously marked as P34.
8 It's a document containing some
9 handwritten notes.

10 VERITEXT CONCIERGE: P34 is now
11 in the marked exhibit folder.

12 BY MR. WALSH:

13 Q. So you're going to want to rotate
14 this document.

15 Okay, do you recognize this
16 document?

17 A. I don't remember if I've seen
18 this.

19 Q. Do you know whose handwriting
20 this is?

21 A. I don't.

22 Q. So this is not your handwriting?

23 A. Doesn't look like it.

24 MR. WALSH: Can we just take a
25 five-minute break, please?

1 LI

2 MR. KOH: Sure.

3 THE WITNESS: Sure.

4 THE VIDEOGRAPHER: We're off the
5 record now at approximately 2:26 p.m.

6 (Recess taken from 2:26 p.m. to
7 2:30 p.m.)

8 THE VIDEOGRAPHER: We're now
9 going back on the record at
10 approximately 2:30 beginning media 5.

11 BY MR. WALSH:

12 Q. Mr. Li, I was just looking back
13 at metadata for this document and you're
14 identified as the original custodian of
15 this document. Do you know why that would
16 be if these were not your notes?

17 A. I may have had a piece of paper
18 which I scanned.

19 Q. Do you recall anyone sending you
20 notes from that meeting?

21 A. I don't remember how I obtained
22 these notes.

23 Q. And you have no idea whose notes
24 they are?

25 A. I don't know whose handwriting

1 LI

2 this is.

3 Q. Okay. During that meeting, do
4 you recall Mike Meyer from McDonald's
5 saying that Tom Tener had failed to
6 consider the encumbrance in the McDonald's
7 lease in his valuation and that McDonald's
8 wanted him to consider that, do you
9 recall?

10 A. I don't remember exactly what
11 Mike Meyer said at the meeting.

12 Q. Do you recall what McDonald's
13 concerns were about KTR's appraisal?

14 A. Seems like they were concerned
15 the number was higher than the appraisal
16 they produced.

17 Q. And do you recall specifically
18 anything that anyone from McDonald's said
19 they believed was wrong with the way in
20 which KTR prepared its appraisal?

21 A. I don't remember what anyone from
22 McDonald's was saying at the meeting about
23 that.

24 Q. Okay. And what do you remember
25 about that meeting?

1 LI

2 A. I remember there was a heated
3 discussion between Morris and Sharon.

4 Q. And what was the nature of that
5 heated discussion?

6 A. There was some kind of
7 disagreement between the two of them.

8 Q. Do you recall what that
9 disagreement was?

10 A. I don't remember exactly what
11 that disagreement was.

12 Q. Do you recall how long the
13 meeting lasted?

14 A. I don't remember.

15 Q. And do you recall whether
16 Vanderbilt raised any concerns with Sharon
17 Locatell's analysis?

18 A. I remember Sharon mentioned that
19 her primary comparable was a property in
20 Staten Island.

21 Q. What else do you recall?

22 A. I remember Carol saying that
23 McDonald's is making a mistake of
24 proceeding with the extension without
25 knowing themselves what the rent would be.

1 LI

2 Q. Carol Demarco said that?

3 A. Yes.

4 Q. And what else, if anything, do
5 you remember about the meeting?

6 A. I can't remember anything at the
7 moment.

8 Q. Do you recall how the meeting
9 ended and like what the next steps were
10 going to be?

11 A. I don't remember.

12 Q. Did Vanderbilt eventually agree
13 to have Tom Tener redo his appraisal while
14 considering the encumbrance of the
15 McDonald's lease?

16 A. Could you repeat the question?

17 Q. Did Vanderbilt eventually agree
18 to have Tom Tener redo his appraisal while
19 considering the encumbrance of the
20 McDonald's lease?

21 MR. KOH: Objection.

22 THE WITNESS: We didn't agree or
23 disagree to allow Tom Tener to do
24 anything. I think Tom Tener was
25 working based on his own understanding

1 LI

2 of what's required to obtain the
3 value.

4 BY MR. WALSH:

5 Q. Do you agree that Tom Tener
6 should have considered the encumbrance of
7 the lease in his letter opinion of value?

8 MR. KOH: Objection.

9 THE WITNESS: I don't remember
10 whether or not he considered it.

11 BY MR. WALSH:

12 Q. Whether he considered it or not,
13 do you agree that he should have
14 considered it?

15 MR. KOH: Objection.

16 THE WITNESS: I don't remember
17 having one opinion or another about
18 that item.

19 BY MR. WALSH:

20 Q. Do you agree that Tom Tener
21 should have performed his appraisal while
22 only considering current zoning
23 regulations?

24 MR. KOH: Objection.

25 THE WITNESS: I don't remember

1 LI

2 having an opinion on how Tom Tener
3 should have valued the property.

4 BY MR. WALSH:

5 Q. Who would have had those
6 discussions with Tom Tener then?

7 MR. KOH: Objection.

8 THE WITNESS: I don't remember
9 whether or not there were such
10 discussions.

11 MR. WALSH: If we could mark
12 VA 019581. It's an e-mail chain
13 between Vanderbilt, KTR and Morris
14 Missry from July 2019.

15 (Exhibit P62, document Bates
16 labeled VA 019581, marked for
17 identification.)

18 VERITEXT CONCIERGE: This will be
19 introduced as P62.

20 BY MR. WALSH:

21 Q. And it spans through 019583.

22 Do you see that the top e-mail is
23 an e-mail from you sending comps that you
24 had found to Tom Tener?

25 A. I see an e-mail I sent to Tom

1 LI

2 Tener.

3 Q. You say here are a few comps we
4 found; right?

5 A. I see the sentence, yes.

6 Q. So these are comps that
7 Vanderbilt found that it was sending to
8 Tom Tener; right?

9 A. I found comps which I sent to Tom
10 Tener.

11 Q. If you can flip to the second
12 page of that document, page ending in 582.

13 A. Um-hum.

14 Q. It's an e-mail from Tom Tener to
15 Sam Rottenberg with a copy to Morris
16 Missry on July 9, 2019. Now you're not
17 copied on this particular e-mail but four
18 paragraphs down, Tom writes comparable
19 leases in the 90 to \$100 per square foot
20 range (about 75 NNN) would support our
21 concluded FMR for a 20 year term.

22 Do you see that?

23 A. I see the sentence you just read.

24 Q. So going back to the first page,
25 you say in your e-mail, I think some of

1 LI

2 the retail 550 Vanderbilt was north of
3 \$100 per square foot but haven't been able
4 to confirm yet.

5 Do you see that?

6 A. I see the sentence you just read.

7 Q. Now, how did you decide what
8 comps to send to Tom Tener?

9 A. I don't know if I made a specific
10 decision.

11 Q. And Tom had specifically told you
12 that comps in the 90 to \$100 square foot
13 range would support his concluded fair
14 market value; right?

15 A. I think Tom attached an e-mail on
16 which at the time I wasn't copied on.

17 Q. But ultimately you saw it because
18 now you're responding to that same chain.

19 Do you see that?

20 MR. KOH: Objection.

21 THE WITNESS: I don't recall if I
22 saw or considered what Tom wrote in
23 that e-mail when I sent my e-mail.

24 BY MR. WALSH:

25 Q. Now, did you find any potential

1 LI

2 comps that you decided not to send to Tom?

3 A. I don't remember what comps I
4 found that may or may not have incidents.

5 Q. What did you do to come up with
6 this list?

7 A. I used Google.

8 Q. And did you consult with any
9 brokers or appraisers?

10 A. I don't remember consulting
11 brokers or appraisers.

12 Q. How did you find this information
13 using Google?

14 A. I searched various terms relating
15 to retail.

16 Q. And you can't remember whether
17 there were some results that you found
18 that you did not pass on?

19 A. I don't remember what I found or
20 didn't find that wasn't shared.

21 MR. WALSH: If we can mark
22 VA 028154.

23 (Exhibit P63, document Bates
24 labeled VA 028154, marked for
25 identification.)

1 LI

2 MR. WALSH: It's a one-page
3 document entitled notes-reset.txt.
4 Mr. Li, you're listed as the
5 custodian. It says it was created
6 July 24, 2019 and modified July 24,
7 2019. The original e-file source is
8 TLi/users/ SL/Dropbox, I won't
9 continue, in another path.

10 VERITEXT CONCIERGE: Can you
11 repeat that number one more time?

12 THE WITNESS: It's VA 028154.

13 VERITEXT CONCIERGE: This will be
14 introduced as P63.

15 BY MR. WALSH:

16 Q. Mr. Li, do you recognize this
17 document?

18 A. I don't remember this exact
19 document.

20 Q. You testified earlier that that
21 Dropbox with your initials TLi, that you
22 believe you were the only one who had
23 access to that. Do you recall if this is
24 a document you authored?

25 A. It's possible. I don't remember.

1 LI

2 Q. Okay. About halfway down the
3 page, reason to sell, even if we prevail
4 at 1M -- presumably one million dollars --
5 per year rent, found it doesn't create
6 enough benefit. It's not so much the next
7 few years but the longer term 15 to 20
8 years.

9 What do you mean when you wrote
10 million dollars a year in rent wouldn't
11 create enough benefit?

12 MR. KOH: Objection.

13 THE WITNESS: I don't remember
14 why -- if I wrote that.

15 BY MR. WALSH:

16 Q. Okay. Do you believe that even
17 at a million dollars a year for McDonald's
18 rent, it wouldn't create enough benefit
19 for Vanderbilt?

20 MR. KOH: Objection.

21 THE WITNESS: I don't know what I
22 believed at the time.

23 BY MR. WALSH:

24 Q. Well, you have exclusive access
25 to this Dropbox folder. Who else could

1 LI

2 have drafted this?

3 A. I could have drafted this. I
4 just don't remember why I did if that's
5 the case.

6 Q. It says not so much the next few
7 years but the longer term 15 to 20 years.
8 What does that mean?

9 A. Looks kind of like gibberish to
10 me so I'm not sure what it means.

11 Q. But Vanderbilt can't redevelop
12 the property as it wants to so long as
13 McDonald's stays on the property; right?

14 A. Correct.

15 Q. And every year that McDonald's
16 stays, Vanderbilt loses the benefit of
17 another year of its 99-year lease; right?

18 A. Can you say the question again?

19 Q. I said in every year that
20 McDonald's stays on the property,
21 Vanderbilt loses the benefit of another
22 year of its 99-year lease; right?

23 MR. KOH: Objection.

24 THE WITNESS: I don't know if
25 that characterization is correct.

1 LI

2 BY MR. WALSH:

3 Q. Well, Vanderbilt obtained a
4 99-year ground lease for the property in
5 November of 2017; right?

6 A. Sure, yes.

7 Q. And the 99-year term isn't
8 dependent on when McDonald's leaves;
9 right?

10 A. I don't remember exactly how the
11 term is determined.

12 Q. Okay. You're the chief
13 administrative officer of Vanderbilt and
14 you don't know the terms of that lease?

15 MR. KOH: Objection.

16 THE WITNESS: There could be
17 provisions that make it a variable. I
18 don't know off the top of my head what
19 that is.

20 BY MR. WALSH:

21 Q. Are you aware of any such
22 provision?

23 A. I don't know off the top of my
24 head.

25 Q. And under the lease that

1 LI

2 Vanderbilt has with MMB, Vanderbilt
3 doesn't actually get to keep any of the
4 rent that McDonald's pays; isn't that
5 right?

6 MR. KOH: Objection.

7 THE WITNESS: I don't remember
8 exactly what the structure is within
9 the lease off the top of my head.

10 BY MR. WALSH:

11 Q. Okay. What are Vanderbilt's
12 current revenue streams?

13 A. There are rent payments from
14 McDonald's.

15 Q. Okay. And those get passed
16 through to MMB Associates, hundred
17 percent; right?

18 A. At the moment an equivalent
19 amount is paid to MMB.

20 Q. So essentially even though that
21 money comes in, a hundred percent of it
22 gets sent back out to MMB; right?

23 A. That's currently the structure,
24 yes.

25 Q. And so Vanderbilt doesn't

1 LI

2 actually get to keep any of that revenue;
3 right?

4 A. The rent payments that are
5 received from McDonald's is currently
6 equivalent to the payments to MMB.

7 Q. Okay. Besides the McDonald's
8 rent, are there any other revenue streams
9 that Vanderbilt can collect revenue on
10 this property?

11 A. There are currently no other
12 revenue streams that I'm aware of.

13 Q. Okay. Are you aware of any other
14 revenue streams so long as McDonald's
15 remains on the property?

16 A. I don't know.

17 Q. And as long as McDonald's stays
18 on the property, Vanderbilt can't
19 redevelop the property; right?

20 A. Correct.

21 Q. And if Vanderbilt is able to
22 redevelop the property, it can then
23 actually start generating positive revenue
24 from the property; right?

25 A. I don't know what would happen if

1 LI

2 or when the redevelopment happens.

3 Q. So in order to make money off
4 this property, Vanderbilt needs McDonald's
5 off the property; isn't that right?

6 A. Not necessarily.

7 Q. Why do you say not necessarily?

8 A. Because I think you're assuming
9 that we're trying to generate a revenue.

10 Q. What other reason would
11 Vanderbilt have in acquiring this property
12 if not to generate revenue off of it?

13 A. There could be some kind of
14 appreciation. We don't necessarily need
15 cash flow on a revenue stream.

16 Q. Would you agree that the property
17 is more valuable with McDonald's off of
18 the property than it is with McDonald's on
19 the property?

20 MR. KOH: Objection.

21 THE WITNESS: I don't know if I
22 agree or disagree with that.

23 BY MR. WALSH:

24 Q. You don't know?

25 A. I just don't know if I agree or

1 LI

2 disagree with that.

3 Q. Has anyone at Vanderbilt that
4 you're aware of done that analysis?

5 A. Well, not that I'm aware of.

6 MR. WALSH: If we can take just a
7 five-minute break, I think I'm
8 wrapping up. I'm getting fairly close
9 to being done.

10 MR. KOH: Okay, let's take a
11 break.

12 MR. WALSH: Why don't we say come
13 back at 3 o'clock.

14 MR. KOH: Okay.

15 THE VIDEOGRAPHER: We're now
16 going off the record at approximately
17 2:52 p.m.

18 (Recess taken from 2:52 p.m. to
19 3:02 p.m.)

20 THE VIDEOGRAPHER: We're now
21 going back on the record,
22 approximately 3:02 p.m.

23 BY MR. WALSH:

24 Q. Mr. Li, do you remember May 2019
25 when Tom Tener and Sharon Locatell were

1 LI

2 trying to identify a third appraiser that
3 the parties could retain as the third
4 appraiser under the option rent addendum?

5 A. I remember there were some
6 e-mails regarding a third appraiser.

7 Q. And what was your involvement in
8 that process of trying to identify a third
9 appraiser?

10 A. I believe I was on e-mails.

11 Q. Other than just being copied on
12 e-mails, did you do anything to actively
13 try to identify other appraisers that
14 could be used as the third appraiser?

15 A. I don't remember if I was
16 involved in identifying any third
17 appraiser.

18 Q. Were you involved in any
19 discussions with Tom Tener or anyone else
20 at KTR about what Vanderbilt was looking
21 for in a third appraiser?

22 A. I don't remember how I was
23 involved, whether or not I was involved in
24 those discussions.

25 Q. Were you ever involved in any

1 LI

2 discussions about the role of the third
3 appraiser and how the third appraiser's
4 letter opinion of value would be used to
5 determine the fair market value of the
6 property?

7 A. I don't remember having those
8 discussions.

9 Q. Are you aware that Vanderbilt has
10 changed its position about how the third
11 appraiser's letter opinion of value would
12 be used to determine the fair market
13 value?

14 MR. KOH: Objection. Go ahead.

15 THE WITNESS: I don't know
16 whether or not Vanderbilt has changed
17 its position.

18 BY MR. WALSH:

19 Q. So you have no knowledge about
20 whether or not Vanderbilt's position today
21 is different from the position it took in
22 2019?

23 A. I don't remember what the
24 position was in 2019, how that might be
25 different from current position, whether

1 LI

2 that's accurate or not.

3 MR. WALSH: Okay. If we can mark
4 VA 027625.

5 (Exhibit P64, document Bates
6 labeled VA 027625, marked for
7 identification.)

8 VERITEXT CONCIERGE: This will be
9 marked as Exhibit P64.

10 BY MR. WALSH:

11 Q. So this is an e-mail chain that
12 spans through 027630?

13 A. What's the exhibit number, sorry?

14 Q. P64.

15 A. I have it open.

16 Q. So on the bottom of that first
17 page, there's an e-mail from Tom Tener to
18 Sam Rottenberg and Morris Missry and Tom
19 Tener writes, "Sam, please send me the
20 list of owners and ownership entities for
21 the conflict check. This is all I need to
22 get this rolling."

23 Do you see that?

24 A. I see the sentence.

25 Q. And if you go, you scroll through

1 LI

2 this page, this document, there's a
3 discussion about potentially retaining an
4 appraiser by the name of Marc Nakleh,
5 that's N-A-K-L-E-H, Marc with a C.

6 A. I see the name.

7 Q. And it looks like Tom looked for
8 a list of owners and entities that Marc
9 could run a conflict check. Do you agree
10 with that?

11 A. I see his e-mail asking for a
12 list of owners and ownership entities for
13 the conflict check.

14 Q. And then Sam Rottenberg forwards
15 that e-mail to you when he gets it; right?

16 A. It's forwarded to me.

17 Q. And then you respond a few hours
18 later just to Sam and you say is there any
19 problem showing all these, and you list a
20 number of entities including several for
21 the fee owner entities and then under
22 leasehold entities you include Vanderbilt,
23 you include 840 Atlantic Holdings, LLC,
24 840 Atlantic LLC Sam Rottenberg, SPR
25 Group, Simon Dushinsky, the Rabsky Group.

1 LI

2 Why were you checking with Sam if
3 there would be any problem showing Marc
4 all of these names of entities that were
5 involved?

6 A. I don't remember exactly what I
7 was asking but I suppose I wanted to check
8 if there were any mistakes.

9 Q. Because these as far as you're
10 aware are all the entities that are
11 involved in this property; right?

12 A. I don't remember what I was or
13 wasn't aware of at the time.

14 Q. Now did Sam ever express to you
15 some concern about revealing all of the
16 individuals and entities who had some type
17 of an interest in this property?

18 A. I don't remember what Sam had or
19 hadn't expressed.

20 Q. So why would you have been asking
21 him if there was any problem showing all
22 of these entities?

23 A. I think I was asking if I had
24 made any mistakes.

25 Q. Are you aware of any mistakes on

1 LI

2 this list as you look at it today?

3 A. I'm not aware of whether or not
4 there are any mistakes.

5 Q. Does it look accurate to you?

6 A. The entities and names look
7 familiar.

8 Q. But does it look accurate to you?

9 A. I don't know whether or not it's
10 accurate for a list of conflict check.

11 Q. As the chief administrative
12 officer of Vanderbilt and one of the two
13 people that are involved in the day-to-day
14 decisions of Vanderbilt, you can't answer
15 whether this is a complete list, complete
16 and accurate list of all the individuals
17 and entities who have an ownership
18 interest in the property?

19 MR. KOH: Objection.

20 THE WITNESS: There are other
21 entities referenced here including the
22 fee owner and tenant entities beyond
23 Vanderbilt Atlantic Holdings.

24 BY MR. WALSH:

25 Q. And how about the leasehold

1 LI

2 entities, does that list look complete and
3 accurate?

4 A. I recognize each of the entities
5 and names that's listed here for
6 leasehold.

7 Q. That wasn't my question. Is it
8 complete and accurate to the best of your
9 knowledge?

10 A. I don't know if it's accurate or
11 not that this list should be included for
12 the conflict check.

13 Q. So where would you have gone to
14 get these names?

15 A. I don't --

16 MR. KOH: Objection.

17 THE WITNESS: -- understand the
18 question.

19 BY MR. WALSH:

20 Q. Well, you provided these names to
21 Sam. Where would you have obtained them?

22 MR. KOH: Objection.

23 THE WITNESS: I don't remember
24 how I obtained those names at the
25 time.

1 LI

2 MR. WALSH: Okay. If we could
3 mark VA 028018.

4 (Exhibit P65, document Bates
5 labeled VA 028018, marked for
6 identification.)

7 VERITEXT CONCIERGE: This will be
8 marked as P65.

9 BY MR. WALSH:

10 Q. It's an e-mail chain that spans
11 through VA 028023. Let me know when you
12 have it opened up.

13 A. I have it open.

14 Q. So this is an e-mail from you to
15 Tom Tener dated May 21, 2019. And you
16 write, "Tom, here are the entities for
17 840 Atlantic Ave. Please let me know if
18 you need other info." But this list is
19 noticeably shorter and excludes many of
20 the individuals and entities that you had
21 included in your e-mail to Sam Rottenberg.
22 Do you see that?

23 A. I see it's a different list.

24 Q. Why did you send a different list
25 to Tom Tener?

1 LI

2 A. I don't remember why.

3 Q. Does this refresh your
4 recollection about whether Sam ever
5 expressed to you concern about revealing
6 all of the entities that were involved in
7 the ownership of this property?

8 A. I don't remember Sam expressing
9 anything on that particular topic. He may
10 or may not have expressed anything.

11 Q. Do you know why you would have
12 provided an incomplete list to Tom?

13 MR. KOH: Objection.

14 THE WITNESS: I don't know
15 whether or not it was incomplete.

16 BY MR. WALSH:

17 Q. Well, but this doesn't list all
18 the other entities that you previously
19 identified as involved with the property.

20 A. I didn't know --

21 MR. KOH: Hold on, was there a
22 question there? It's an observation.

23 BY MR. WALSH:

24 Q. Would you agree that this is an
25 incomplete list?

1 LI

2 MR. KOH: Objection.

3 THE WITNESS: I don't know
4 whether or not that's an incomplete
5 list.

6 BY MR. WALSH:

7 Q. Have you ever been convicted of a
8 crime?

9 A. I have not.

10 MR. WALSH: I believe I'm done.
11 If I could just have one minute, I'll
12 come right back but I believe I'm
13 done.

14 MR. KOH: We'll stand by.

15 THE VIDEOGRAPHER: Now off the
16 record at 3:13 p.m.

17 (Recess taken from 3:13 p.m. to
18 3:15 p.m.)

19 THE VIDEOGRAPHER: Now back on
20 the record at 3:15 p.m.

21 MR. WALSH: Mr. Li, I don't have
22 any further questions at this time.

23 MR. KOH: I have no questions.
24 This deposition is concluded.

25 MR. WALSH: Thank you for your

1 LI

2 time today, Mr. Li.

3 THE WITNESS: Thank you.

4 MR. KOH: Thank you, Tom.

5 THE VIDEOGRAPHER: Now going off

6 the record at approximately 3:15 p.m.

7 (Time noted: 3:15 p.m.)

8

9

10 TOM LI

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12 Subscribed and sworn to before me

13 this ___ day of _____, 20__.

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16 Notary Public

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C E R T I F I C A T E


STATE OF NEW YORK)
: ss.
COUNTY OF NASSAU)

I, CATHI IRISH, a Registered
Professional Reporter, Certified Realtime
Reporter, and Notary Public within and for
the State of New York, do hereby certify:

That TOM LI, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 1st day of September,
2021.



CATHI IRISH, RPR, CRR, CLVS

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Exhibit P42,	document Bates labeled	36
VA 027098		
Exhibit P43,	document Bates labeled	46
VA 017719		
Exhibit P44,	document Bates labeled	62
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Exhibit P45,	document Bates labeled	66
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2	Exhibit P49, document Bates labeled	113
3	VA 028037	
4	Exhibit P50, document Bates labeled	115
5	VA 044862	
6	Exhibit P51, document Bates labeled	120
7	VA 011088	
8	Exhibit P52, document Bates labeled	122
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10	Exhibit P53, document Bates labeled	123
11	VA 028067	
12	Exhibit P54, document Bates labeled	125
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15	VA 027997	
16	Exhibit P56, document Bates labeled	133
17	VA 027814	
18	Exhibit P57, document Bates labeled	134
19	VA 027838	
20	Exhibit P58, document Bates labeled	140
21	VA 027808	
22	Exhibit P59, document Bates labeled	155
23	VA 027513	
24	Exhibit P60, document Bates labeled	160
25	VA 027432	

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2 Exhibit P61, document Bates labeled 169

3 VA 026610

4 Exhibit P62, document Bates labeled 180

5 VA 019581

6 Exhibit P63, document Bates labeled 183

7 VA 028154

8 Exhibit P64, document Bates labeled 194

9 VA 027625

10 Exhibit P65, document Bates labeled 199

11 VA 028018

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1 ** ERRATA SHEET **

2 CASE: MCDONALD'S vs. VANDERBILT

DEPOSITION DATE: 8/31/2021

3 DEPONENT: TOM LI

4	PAGE	LINE(S)	CHANGE	REASON
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5 | _____ | _____ | _____ | _____

6 | _____ | _____ | _____ | _____

7 | _____ | _____ | _____ | _____

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10 | _____ | _____ | _____ | _____

[illegible]

12 | _____ | _____ | _____ | _____

13 | _____ | _____ | _____ | _____

14 _____|_____|_____|_____

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TOM LI

22

SUBSCRIBED AND SWORN TO BEFORE ME

23 THIS _____ DAY OF _____, 20____.

24

25 | (NOTARY PUBLIC)

MY COMMISSION EXPIRES:

[& - 2018]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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